

SETTLEMENT OF DISPUTES IN INTERNATIONAL TRADE

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I. INTRODUCTION

The creation of the World Trade Organisation (WTO) completes the Bretton-Woods system conceived after the World War II comprising of International Bank for Reconstruction and Development (IBRD), International Monetary Fund (IMF) and International Trade Organisation (ITO). The ITO could not materialise and was substituted by General Agreement on Tariffs and Trade (GATT) 1947, the creation and establishment of the WTO may in future years to come substitute ITO.¹ The WTO is an international economic and legal organisation created and established as a result of Uruguay Round of Multilateral Trade Negotiations (URMTNs)² held under the auspices of GATT. The URMTNs objectives were to develop an integrated, more viable and durable multilateral trading system encompassing the GATT and its past trade liberalisation efforts as well as the results of URMTNs. Accordingly, the purpose of the WTO is to provide institutional framework for implementation, administration and operation of the Multilateral and Plurilateral Trade Agreements, and serves as a forum for international trade negotiations and settlement of disputes.³ More than hundred countries have approved and ratified the WTO and the signatory member countries have subjected themselves to the sovereignty of the WTO,⁴ as well it is in the interest of the member states to comply with the decisions of the WTO especially for the sake of increasing the wealth and economic stability of all the trading partners of the world.⁵

The organisational structure of the WTO comprises of the Ministerial Conference, General Council and Councils for Trade in Services, Goods and Trade Related Aspects of Intellectual Property (TRIPs). The Ministerial Conference which is composed of representatives of all member states is vested with decision making powers and meets every two years.⁶ The decision making powers of the Ministerial Conference are: (a) the right to adopt interpretations of the WTO Agreement and the Multilateral Trade Agreements;⁷ (b) the power to waive obligations under the WTO Agreements and the Multilateral Trade Agreements⁸ and (c) the amendments of the Multilateral Trade Agreements under certain circumstances. The decision making process

is by consensus and if the consensus cannot be reached, the Agreements provide for majority voting, unless otherwise specified.

The General Council is composed of representatives of all member states which meets in the intervals between meetings of the Ministerial Conference.¹⁰ The General Council is also empowered to carry out the functions assigned to it by the WTO Agreement and the General Council has the power to establish its own rules of procedure. The Councils for Trade in Services, TRIPs and Trade in Goods monitor the functioning of the various Multilateral Trade Agreements. These Councils are also authorised to carry out the functions assigned to them by their respective Agreements as well as by the General Council,¹¹ and these councils have been empowered to establish subsidiary bodies to carry out the functions of these Agreements.¹²

In addition, General Council serves as the Dispute Settlement Body (DSB)¹³ and also as Trade Policy Review Body (TPRB).¹⁴

II. DISPUTE SETTLEMENT IN GATT, 1947

A. Scheme of the GATT, 1947

The GATT, 1947 in the legal technical sense did not conceive of a specific procedure or provision for the settlement of disputes nor did it provide legal norms as to when a breach or breaches would amount to violations of a rule to give rise to a dispute. Nor is there any provision in the GATT for the establishment of an internal tribunal to resolve actual disputes or to promulgate authoritative interpretations on questions of interpretations, yet over the years the disputes with regard to breaches of substantive norms of GATT and its articles as well as the questions of interpretations have been a recurring phenomena and surprisingly enough GATT, 1947 has resolved many more disputes and evolved umpteem interpretations and interpretative techniques to make run the international trade smoothly. To some extent, the Contracting Parties, acting jointly under Article XXV. 1 or under more specific provisions of GATT, 1947 exercised the functions of a Tribunal. As the GATT, 1947 is drafted in conventional terms, including a rather liberal use of prohibitory language, the remedy provisions are not drawn in terms of sanctions. The organising principle permeating the GATT, 1947 as a whole is a system of reciprocal rights and obligations to be maintained in balance.¹⁶ Professor Jackson, however, notes that there are nineteen clauses in the GATT which obligates GATT contracting parties to consult in specific instances including the instances of customs valuation, and invocation of escape clause.¹⁷ Also, there are seven different provisions for compensatory withdrawal or suspension of concessions.¹⁸

The main task of the GATT, 1947 settlement of disputes being that the

reductions of tariffs in the various rounds of tariff negotiations should not be diluted by the actions of other contracting parties and the contracting parties must observe whatever commitments they have made under the GATT counter as well as the contracting parties must observe the substantive norms of international trade. The GATT, 1947 conceived in Article X an important obligation towards achieving the above said objectives. Article X entitled publication and administration of trade regulations, which required the publication of laws, regulations, periodical decisions and administrative rulings of general application pertaining to the treatment of products for customs duties. Such instruments are to be published promptly in such a manner as to enable governments and traders to become acquainted with them. Similarly, agreements 'affecting international trade policy' in force in between the government or a governmental agency of one contracting party and another contracting party, were also to be published. Certain types of measures of general application, such as changes in a rate of duty or the imposition of a restriction on imports were not to be enforced before such measures had been officially published.¹⁹ By 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance further set out the commitment of contracting parties to notify such measures to the maximum extent possible notwithstanding whether those measures are consistent with the rights and obligations of the contracting parties under the GATT.²⁰

B. Article XXIII and the Role of Panels

Despite the many aspects of the GATT that are relevant to a balanced view of the GATT dispute settlement mechanism, Article XXIII in addition conceives of a formal system of settlement of disputes. Article XXII concerns with the consultation and ordains that every contracting party shall accord sympathetic consideration to and shall afford adequate opportunity for consultation regarding such representation as may be made by another contracting party with respect to any matter affecting the operation of GATT. Also, the contracting parties may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation.

Article XXIII not only provides last resort in any dispute but its gamut delimits and defines the true scope of all of the substantive provisions of the GATT. As Article XXIII has been expressly incorporated in various WTO agreements, as the standard for dispute settlement or a very similar provision is contained in other agreements as well as Dispute Settlement Understanding (DSU) of the URMTNs also incorporates Articles XXII and XXIII as basic principles for the management of disputes, hence a critical analysis of Article XXIII is called for.

C. Critical Analysis of Article XXIII

To begin with, Article XXIII gives the affected party a sole remedy the withdrawal of such concessions or other obligations as the contracting parties may determine to be appropriate in the circumstances. A complainant under this Article must show that either (i) benefits accruing to him under the GATT are being nullified or impaired; or (ii) the attainment of an objective of the GATT is being impeded. In addition, the complainant must further show that such nullification or impairment is a result of (a) a breach of obligation by the respondent contracting party; (b) the application of any measure by the respondent contracting party, whether it conflicts with the GATT or not; or (c) the existence of any other situation.

Over the years the contracting parties were at pains to implement the provisions of Article XXIII with all its attendant limitations either by way of resolutions, rulings by Chairman and other working parties, however, by 1962, the first panel on complaints was constituted.²¹ And by 1979, as a result of Tokyo Round of Tariff Negotiations the system of panels was codified and more than forty cases were resolved by way of panels. By 1990, 140 cases²² were resolved under Article XXIII by the use of the panels and the panels have played a dominant role in the overall settlement of disputes brought before the contracting parties. The panel is an independent body of experts with three main tasks *viz* (a) to inquire into the facts of the case; (b) to assess all the relevant elements for a decision on the measures; and (c) to submit a proposal for such a decision. The reports of the panels do not have a legal force. Finally the panel reports go to GATT contracting parties where the mediating and political aspects are reconsidered and the panel report if gets adopted, achieves legal force. Although Article XXV : 4 provides for majority voting, this provision has been modified to require consensus.

The complaints under Article XXIII 1(b) termed as 'non-violation complaints' have raised questions of interpretation (nine complaints have been filed under this part of the Article) and non-violation complaints have been successful only if the infringement of tariff benefit could be proved.²³

(i) Nullification and Impairment of Benefits

A survey of the cases of violation of Article XVIII reveals that the panels adopted different and varying interpretations to the phrase nullification and impairment of benefits. In early violation cases²⁴ some sort of injury to the contracting party was considered necessary before invoking Article XVIII, however, in subsequent cases, the concept of *prima facie* or nullification and impairment was introduced.²⁵ Nullification and impairment concepts have further been concretised in the form of 'adverse effect' and 'frustration of

reasonable' expectation and these two concepts are not necessarily applied in a cumulative way but are applied separately.²⁶

However, the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance provided :

"16. The functions of panels is to assist the contracting parties in discharging their responsibilities under Article XXIII. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the GATT and if so requested by the contracting parties, make such other findings as will assist the contracting parties in making the recommendation or in giving the rulings provided for in Article XXII : 2. In this connection, panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution."²⁷

(ii) Burden of Proof

The burden of proof lies on the party complaining the GATT violation,²⁸ but in cases where the respondent member state would raise exception clauses as exceptions to the violations, the burden of proof, would shift to the respondent.²⁹ However, the GATT process did not contemplate oral testimony and any evidence documentary, oral or otherwise is not subjected to any tests of relevance, admissibility or probative value.

(iii) Remedies and Sanctions

The practice of panels normally is to propose that the contracting parties recommend that the violation of the Agreement by the party should be terminated. And finally, in case the contracting party does not stop violation of GATT, the contracting parties may sanction suspension of concessions.

III. WTO, GATT 1994 AND THE Settlement of Disputes

A. DSU and Its Applicability

The central provision pervading the settlement of disputes under the WTO is GATT Article XX and XXIII, though as shown already, Article XXIII does not provide specific procedures for settling disputes concerning matters arising out of GATT. Therefore, the Understanding on Rules and Procedures Governing the Settlement of Disputes 1994 (DSU)³⁰ came into being only after the WTO agreement came into force.³¹ The rules and procedures of the DSU are applicable to the Agreements establishing the WTO; Agreement on trade in goods; GATS; TRIPs and DSU.³² DSU shall also apply to Agreement on Trade in Civil Aircraft; Agreement on Government Procurement; International Dairy Agreement and Arrangement Regarding Bovine Meat provided the signatories

to each Agreement decide for accepting the terms of the DSU application.

The rules of DSU with special modification have been applicable to other Agreements as listed in Appendix 2 to DSU such as³³:

Agreement	Rules and Procedures
Anti-Dumping	17.4 to 17.7
Technical Barriers to Trade	14.2 to 14.4, Annex. 2
Subsidies and Countervailing Measures	4.2 to 4.12, 6.6, 7.2 to 7.10, 8.5, Foot note 33, 25.3 to 25.4, 28.6, Annex. V.
Customs Valuation	19.3 to 19.5, Annex. II.2(f), 3, 9, 21.
Sanitary and Phytosanitary Regulations.	36
Textiles	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 to 8.12.
GATS (General Agreement on Trade in Services)	XXII : 3, XXIII : 3
Financial services	4.1
Air Transport Services	4
Ministerial Decisions on Services Disputes	1 to 5.

(The above list of rules and procedures includes provisions where only a part of the provision may be relevant in the context).

B. The Objectives of the DSU

As already explained, the main objectives of GATT disputes settlement were : that the tariff and other concessions negotiated in various rounds should not be whittled down by the contracting parties; contracting parties should ensure observance of the obligation entered upon by them for carrying on the international trade smoothly; and accordingly the member states were obligated to publish, preserve and impose restrictions in their municipal setting to give full effect to the obligations entered upon in pursuance of being the members of GATT.³⁴ In short the central core of dispute settlement in GATT was the balancing of concessions of contracting parties as well as³⁵ adherence to the GATT's obligations.

The working of the GATT, 1947 till the establishing of DSU and WTO, establishes beyond doubt that the primary function or objective of the GATT settlement of disputes was to arrive at a mutually acceptable solution to the disputes arising out of GATT's obligations but it was not always in keeping with the core provisions of the GATT and the interests of other parties³⁶ always seemed secondary. However, Article 3 of the DSU takes a holistic approach not only by affirming in the principles of management of disputes under Articles XXII and XXIII of GATT, 1947 but also by safeguarding that the settlement of disputes should be GATT consistent also. The DSU although prefers a mutually acceptable solution but the settlement should also be consistent with the covered agreement as provided by the URMTNs in the Marrakesh Treaty. DSU is central element of the WTO and should serve to preserve the rights and obligations of the members of the WTO under the covered agreements and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Further it is essential for the effectiveness of the WTO to settle disputes promptly and maintain proper balance between the rights and obligations of the members, as it is the aim of the dispute settlement mechanism to secure a positive solution to a dispute.

C. Dispute Settlement Mechanism

(i) Dispute Settlement Body (DSB)

The settlement of disputes mechanism in the WTO is administered by the Dispute Settlement Body (DSB) which will effectively be the WTO General Council acting in a specialised role. As already mentioned the General Council is composed of representatives of all member states which meets in the intervals between meetings of the Ministerial Conference, the General Council working as DSB can establish its own rules of business.³⁷ The DSU will also regulate the dispute settlements under all covered Multilateral Agreements, although under some agreements special rules and procedures will be applicable.³⁸ The DSB is empowered to establish panels, adopt panels and appellate body reports, maintain surveillance of the implementation of rulings and recommendations and authorise suspension of concessions and other obligations under the covered Agreements. While the DSB administers the dispute settlement provisions of a covered Multilateral Trade Agreement in Annex 4 only those members who are parties to that covered Agreement can participate in decisions or actions taken by the DSB with respect to that dispute.³⁹

(ii) Consultation

Normally, an international trade dispute settlement commences with consultation between the sovereign countries under Article XX of the GATT,

1947 and as already noted the consultation mechanism was further strengthened and reaffirmed in the Tokyo Round,⁴⁰ the DSU affirms in the effectiveness of the consultation and provides that each member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representation made by another member concerning measures affecting the operation of the covered Multilateral Trade Agreements taken within the territory of the former.⁴¹ Such consultations occur regularly at the official level and can be raised to ministerial level as appropriate.

The request for consultations are to be notified to the DSB and relevant council and committees by the requesting party and the DSU requires that there should also be an identification of the measures at issue and an indication of the legal basis for the complaint.⁴² This provision in the DSU reinforces the belief that international trade disputes have international law dimensions and as such the WTO members should delineate the character of dispute before it is submitted for consultation to DSB.

If the consultations fail to settle the dispute within sixty days after the request for consultation, the complaining party may request the establishment of a panel. The complaining party may also request a panel during the sixty day period provided both the parties jointly consider that consultation has failed.⁴³

It is pertinent to mention that the request for consultation and its field of reference that may be referred to panel is crucial as any failure to raise an issue or to advance a particular objection to the impugned measure has resulted in the respondents successful objection to its consideration by the panel. Reference may be made of the cases decided by the GATT panel in EEC-Quantitative Restrictions Against Imports of Certain Products from Hong Kong,⁴⁴ Canada-Administration of the Foreign Investment Review Act,⁴⁵ as well as United States-Denial of Most Favoured Nations Treatment as to Non-Rubber Footwear from Brazil.⁴⁶ In all these cases the ill conceived reference proved fatal for defining the real issue by the panel. In the Brazilian case referred above the panel has specifically ruled that having heard and considered the arguments of Brazil and the United States as to whether or not the panel should consider presentations on Article X and XVIII: 1 (b) and (c), the panel rules as follows:

Article X : The panel notes that its terms of reference are limited to the matters raised by Brazil in its request for the establishment of this panel.... In its request, Brazil referred to the discrimination in the United States countervailing duty laws as applied to Brazil, not however, to any discrimination resulting from the administration of the United States countervailing duty laws. The panel therefore considers that the matter raised by Brazil in its submissions relating to Article X : 3 (a) is not part of its terms of reference. The

panel would like to emphasise however, that it is ready to consider any arguments on the issue of discrimination, taking into account its terms of reference. In regard to Article XXIII : 1 (b) and (c), the Panel further notes that in its request for a panel, Brazil claimed that United States had acted inconsistently with the GATT. Brazil did not claim that the benefits accruing to it under the GATT were nullified or impaired as a result of measure or situation of the type referred to in Article XXIII : 1 (b) and (c). The panel therefore considers that the matters raised by Brazil relating to these provisions were not covered by its terms of reference.⁴⁷

Whenever, a member of WTO other than the consulting member thinks that the member has substantial trade interest in consultations being held pursuant to Article XXII : 1 of the GATT, Article XXII : 1 of the GATS Agreement or the corresponding provisions in other covered Multilateral Trade Agreements, such interested member may notify the consulting member and the DSB within ten days of the circulation of the request for consultation of its desire to join the consultations. It is obligatory on the part of other consulting members to join the interested member provided the concept of substantial interest is well founded and accordingly the consulting member/members shall so inform the DSB. If the request to be joined is denied, the applicant member is free to request for consultations under Article XXII : 1 or XXIII : 1 of the GATT, Article XXII : 1 or XXIII : 1 of the GATS Agreement or the corresponding provisions in other covered Multilateral Trade Agreements.⁴⁸

(iii) Good Offices, Conciliation and Mediation

If the consultation fails, the member of WTO may avail themselves DSU's conciliation or mediation services. Article 4 of DSU provides for good offices, conciliation and mediation which are taken voluntarily if the parties to the dispute so agree and requested at any time of the dispute and can be terminated at any time. Whenever good offices, conciliation or mediation are entered into within sixty days of a request, the complaining party must allow a period of sixty days from the date of the request for consultation before requesting for the establishment of a panel. Also, the complaining party may request a panel during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation and mediation has failed to settle the dispute. Further the Director General of GATT may offer to provide such services in an effort to assist members to resolve a dispute.⁴⁹

(iv) The Establishment of Panels

To resolve the dispute within sixty days if the consultation fails, or the complaining party so requests, a panel may be established by the DSB to hear

the dispute. The DSB may by consensus also decide not to establish a panel. The request for the establishment of panel has to be made in writing and such request shall indicate whether consultations preceded the request for panel; identify the specific measures at issue; and also provide a brief summary of the legal nature of the complaint and the problem clearly. Special terms of reference as alternative to the above method of reference is also possible provided the written request includes the special terms of reference.⁵⁰ The establishment of panel appears to be a matter of right with the complaining party.

1. Terms of Reference of Panels

In order to avoid delays and also to clear the functioning of panels, the standard terms of reference are to be furnished within thirty days from its establishment and are "to examine, in the light of the relevant provisions in (name of the covered Agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of the party) in document DS ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those Agreement(s)". The DSB may authorise its Chairman in establishing a panel to draw up the terms of reference of the panel in consultation with the parties to the dispute and such terms shall be circulated to all members.⁵¹

2. Composition of Panels

The panels shall be composed of three panelists or five provided the parties to the dispute agree for the same within ten days after the establishment of the panel. It is the secretariate which propose nominations for the panel to the parties to dispute and the parties to dispute are not expected to oppose nominations except for compelling reasons. If the parties do not agree within twenty days from the establishment of a panel, at the request of either party, the Director General of WTO in consultation with the Chairman of DSB, and the Chairman of the relevant council or committee may form the panel by appointing the panelists whom he or she considers most appropriate in accordance with any relevant special or additional procedure of the covered Multilateral Agreement, after consulting with the parties to the dispute. Accordingly, the Chairman of the DSB may inform the members of the composition of the panel thus formed not later than ten days from the date he or she receives such a request.⁵²

The Secretariate has to maintain a roster of panelists both governmental and non-governmental individuals possessing the qualifications of either having served on or presented a case to a panel, served as a representative of a WTO member, or of a contracting party to the GATT, 1947 or as represen-

tative to a council or committee of any covered Multilateral Agreements or its predecessor Agreement, or in the Secretariate, taught or published on international trade law or policy, or served as a senior trade policy official of a member. These panel members are to be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.⁵³

In order to keep the panels neutral, it is provided that citizens of members whose governments are parties to the dispute or a member of a covered Multilateral Agreement at issue in a dispute, having a substantial interest in a matter before a panel shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.⁵⁴ If a dispute is between a developing country member and a developed country member, the panel shall include at least one panelist from a developing country.⁵⁵

3. Panel Procedures

Once appointed, the panel hears oral arguments by the parties and reviews their written submission on the issues. Other WTO members may also intervene and present arguments to the panel, although the panel considers only issues raised by the principal disputing parties. Formal rebuttals are made in the subsequent meetings of the panels. The party complained against has a priority to take the floor first followed by the complaining party. Panelists have a right to put questions and ask explanations in course of meetings from the parties orally or in writing. The oral arguments presented by the party to the panel shall also be made available to the panel in writing. The DSU rules provide time limits for implementation of various stages in the panel process such as (a) receipt of first written submission of the parties :

1. complaining party (plaintiff), 3-6 weeks; 2. party complained (defendant), 2-3 weeks; (b) date, time and place of first substantive meetings with the parties; third party session, 1-2 weeks; (c) receipt of written rebuttals of the parties, 2-3 weeks; (d) date, time and place of the second substantive meeting with the parties, 1-2 weeks; (e) submission of descriptive part of the report of the parties, 2-4 weeks; (f) receipt of comments by the parties on the descriptive part of the report, 2 weeks; submission of the interim report, including the findings and conclusions to the parties, 2-4 weeks; (h) details for party to request review of parts of report, 1 week; (i) period of review by panel including possible additional meeting with parties, 2 weeks; (j) submission of final report of parties to the dispute, 2 weeks; (k) circulation of the final report to the members, 3 weeks.⁵⁷ These time limits suggest that a panel report should be arrived at within a period of eight to nine months. The other provisions of panel procedures stress transparency and a legalistic approach for concluding the

panel deliberations as well as expeditious disposal of the disputes brought before the panel. Specific provision has been made to extend the more favourable and differential treatment to the developing countries which has been accorded to them by the covered Multilateral Agreements in course of settling the disputes.⁵⁸

The panel have a right to seek information and technical advice from any individual or body which it deems appropriate and for eliciting such information and advice, the panel should inform the member. It is obligatory on the member to respond promptly to any such request by the panel. The panel may also seek information from any relevant source and may also consult experts, to obtain their expert opinion on the matters at issue.⁵⁹

4. Adoption of Panel Reports

GATT, 1947 practice of adoption of panel reports was somehow faulty as the GATT Council had to adopt the panel reports by consensus and as such the panel reports were never accepted in their spirit and character and also were blocked by the losing country. If the panel report was not adopted, the panel exercise was a futility. Thus procedure of adoption of GATT panel reports was considered the greatest lacuna in the GATT, 1947 settlement of disputes and this provision would make the settlement of disputes non-starter.

However, DSU has organically and fundamentally changed the procedure of settlement of disputes of GATT, 1947. The DSU goes somewhat further than the GATT, 1947 by providing for interim review of the pros and cons of the dispute after the parties have submitted their submissions to the panel and parties to the dispute may request review of the interim report or its parts.⁶⁰ This is a further check against erroneous findings of fact and law as well as opportunity for the losing party to have last opportunity of rectifying the mistake before the panel arrives at its final decision.

Once the report has been finalised by the panel, it is submitted to DSB, the members are given twenty days before DSB adopts the report. The members within ten days can raise objections to panel report and the party to a dispute shall have full right to participate in the consideration and deliberation of the report by DSB. The DSB after the issuance of the panel report and within sixty days shall adopt the panel report at a meeting (if a meeting is not scheduled, a meeting of the DSB should be held) unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB by consensus decides not to adopt the report. If a party has notified its intentions to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal.⁶¹

5. Appellate Review

The DSB has been empowered to establish standing Appellate Body with seven members, three of whom shall serve on any one case and shall hear appeals from panel cases. The standing Appellate Body is composed of persons of recognized authority, who have demonstrated expertise in law, international trade and the subject matter of the covered Multilateral Agreements. These members are not to be affiliated with any governments. The tenure of the person appointed to serve on the standing Appellate Body is four years with the possibility of re-appointment.⁶²

The standing Appellate Body is limited to considering issues of law covered in the panel report and legal interpretations developed by the panel. The appellate proceedings are normally to be concluded within sixty days and in any event not to exceed ninety days and the appellate body has to inform the DSB in writing of the reasons for extension of time. The report of the standing Appellate Body is subject to the same automatic adoption rule as regular panel reports by the DSB unless the DSB decides otherwise by consensus within thirty days of its circulation to the DSB.

The DSB provides a strict rule of confidentiality and there is a prohibition of *ex-parte* communications with the panel or Appellate Body with regard to the matters for their consideration. Also any written submission to the panel or Appellate authority is treated most confidential, however, the members to the dispute have a right of access to the same.⁶³

The decision of the panel and the Appellate Body that a measure is inconsistent with a covered multilateral Trade Agreement, shall obligate the member to bring the measure into conformity with that Multilateral Agreement. The Appellate Body or panel can also recommend measures for bringing the measure in conformity with the rule or the Multilateral Trade Agreement.⁶⁴

6. Surveillance of Implementation of Recommendations & Rulings

Article 21 provides elaborate mechanism of surveillance of implementation of recommendations and rulings of panels and Appellate Body reports. If a panel finds a complaint is justified, its report categorically recommends that the offending member should cease and desist from the violations of GATT rules by either withdrawing the offending measures or suitably amending the measures to bring it in conformity to the GATT rules or covered Multilateral Agreements.

Accordingly once the report is accepted, the DSB is empowered to monitor whether or not its recommendations have been implemented. The DSB is further empowered to keep vigil in respect of the measures which a losing party

has to take to remedy a violation of GATT or the covered Multilateral Agreement in pursuance of the recommendations of the panel within thirty days of the adoption of the panel or Appellate Body report. If the member is not in a position to comply with the panel's recommendations immediately, a reasonable time may be granted to such member by the DSB or a mutually agreed time frame within forty five days of adoption of the recommendations and rulings may also be worked out, or further arbitration may be proceeded to following adoption by the rulings and reports by the DSB between the disputants. In such arbitration, arbitrators are supposed to implement the panel recommendations and rulings within a period of fifteen months.

In case of disagreement between the disputants of the existence or consistency with a covered Multilateral Agreement, of the measures taken to comply with the recommendations and rulings such disputes are to be resolved by referring them to the settlement dispute mechanism of the covered Agreements.

The DSB is further empowered to keep under surveillance the implementation of the adopted recommendations or rulings. Any member has a right to raise the issue of implementation of the panel recommendation at the DSB. DSB shall keep on its agenda the implementation of the panel recommendations and rulings for a period of six months.⁶⁵

7. Compensation and the Suspension of Concessions

If the recommendations are not implemented, the winning party may be entitled to seek compensation or the authority to seek to suspend concessions previously made to that member. However, neither compensation nor the suspension of compensation or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered Multilateral Agreements.⁶⁶ Article 21.1 of the DSU provides that prompt compliance with recommendations or rulings of the DSB is essential in order to assure the effective resolution of disputes to the benefit of all members.

It is noteworthy that Article 22.3 of the DSU, catalogues the principles for suspending concessions and obligations after invoking the dispute settlement procedures as conceived in the DSU and briefly are as under :

- (a) suspension with respect to same sector in which the nullification or impairment or violation has occurred;
- (b) suspension with same sector is neither practicable nor effective, suspension in other sectors under the same agreement;
- (c) suspension with other sectors is not effective or practicable and the circumstances are serious enough, suspend concession or other obligations

under another covered Multilateral Agreement;

(d) for applying the above principles, sectoral trade and how far it can compensate, as well as broader economic elements related to the nullification or impairment and broader economic consequences of the suspension or other obligations. If the party request authorisation to suspend concessions or other obligations pursuant to (a) and (b) set above, it shall state the reasons for the request which is sent to DSB. Such a request shall also be forwarded to the relevant council of the covered Multilateral Agreements. The level of suspension of concessions or other obligations authorised by the DSB shall be equivalent to the level of the nullification or impairment.⁶⁷

It is important to note that the DSB shall not authorise suspension of concession or obligations if a covered Agreement prohibits such suspension.⁶⁸

Although as noted earlier, the level of the suspension of concessions or other obligations authorised by DSB has to be equivalent to the level of nullification or impairment, yet the DSB can under certain circumstances and by way of a protest by a complaining party, refer the matter to arbitration. Such arbitration has to be carried out by the original panel, if members are available or by an arbitrator appointed by the Director General of WTO. Such arbitration has to be completed within sixty days and concessions or other obligations negotiated earlier cannot be suspended during the course of the above said arbitration.⁶⁹ The role of the arbitrator is limited as he cannot examine the nature of the concessions or other obligations to be suspended but is concerned only to examine whether the level of nullification and impairment is equivalent to the level of injury incurred by the member. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered Multilateral Agreement. The arbitrator may further examine whether the principles required to suspend concession or other obligations (Article 22.3) have not been complied with and the decision of the arbitrator in this connection is final. All these decisions by the arbitrator shall be communicated to the DSB promptly and the DSB upon request by a party may grant authorisation to suspend concession or other obligations.⁷⁰ Finally DSU provides that the suspension of concessions or other obligations are by way of a temporary relief and are applicable till such time as the measure has been found to be inconsistent with a covered Multilateral Agreement has been removed, or the member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits or a mutually satisfactory solution is reached. It is incumbent on the DSB to continuously monitor the compliance of implementation of the adopted recommendations or rulings, including cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to

bring the measure into conformity with the covered Agreements have not been implemented.⁷¹

Further, the dispute settlement provisions of the covered Multilateral Agreements can be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a member. Whenever, the DSB rules that a member does not observe the provisions of a covered Multilateral Agreement, it is incumbent on the member to observe the provisions by taking reasonable measures necessary for such observance.⁷²

8. Non-Violation

As already explained in the beginning of this Article, complaints under Article XXIII : 1(b) termed as non-violation complaints have raised questions of interpretation (nine complaints have been filed under this part of the Article) and non-violation complaints have been successful only if the infringement of tariffs were proved. The DSU have incorporated the above said non-violation principles and have provided that whenever the provisions of Article XXIII : 1(b) of GATT, 1947 are applicable to a covered Multilateral Agreement, a panel or appellate body may only make rulings and recommendations where a party to the dispute considers that any benefit accruing to it directly or indirectly under the covered Multilateral Agreement is being nullified or impaired or any objective of that Multilateral Agreement is impeded as a result of the application by a member of any measure, whether or not it conflicts with the provisions of that Agreement.⁷³ DSU rules further provide for a panel or Appellate Body to arrive at a decision whether a case concern a measure that does not conflict with the provision of a covered Multilateral Agreement to which the provisions of Article XXIII : 1(b) of GATT 1994 are applicable, the DS procedures of 1994 are applicable provided :

(a) the complaining party presents a detailed justification in support of her complaint relating to measures which does not conflict with the covered Multilateral Agreement;

(b) where the measure has been found to nullify or impair benefits under or impede the attainment of objectives of the relevant covered Multilateral Agreement without its violation thereof, there is no obligation to withdraw the measure. However, in such cases the panel or the Appellate Body shall recommend that the member concerned make a mutually satisfactory adjustment;

(c) the arbitration provided in the rules and as discussed above, may upon request of either party determine the level of benefits which have been nullified or impaired and the arbitration may also suggest ways and means of reaching a mutually satisfactory adjustment; and

(d) compensation may be part of a mutually satisfactory adjustment as final settlement of dispute.⁷⁴

Where the provisions of Article XXIII : 1(c) of the GATT 1994 are applicable to a covered Multilateral Agreement, a panel may not only make rulings and recommendations where a party considers that any benefit accruing to it directly or indirectly under the relevant covered Multilateral Agreement has been nullified or impaired or the attainment of any objective of that Multilateral Agreement is being impeded as a result of the existence of any situation other than those to which the provisions of Article XXIII : 1 (a) and (b) of GATT, 1994 are applicable where and to what extent such party considers and a panel determines that the matter is covered by the above paragraph, the procedure of DSU applies only upto and including the point in the proceedings where the panel report has been issued to the members. For the consideration of adoption, and surveillance and implementation of recommendations and rulings the procedure and rules contained in the decision of the GATT Council of Representatives of 12 April 1989 (BISD 365/61) applies. For such an application the following principles may be kept in mind i.e. the complaining party should present a detailed justification in support of any argument made with respect to issues covered; and in cases involving above said matters, if a panel finds that cases also involve dispute settlement matters other than those covered under Article XVIII : 1(c) the panel should issue a separate report detailing with such matters.⁷⁵

IV. JURISPRUDENCE OF LITIGATING PROCESS IN WTO

A. General

An overview of the whole gamut of the DSU and the attendant rules in covered Multilateral Agreements to a fairly large extent have treated to overcome the principal complaints of the GATT dispute settlement system such as delays in the establishment of panel, panel members, and completion of panel reports; and competence, quality and neutrality of panel reports; blocking of panel reports, and their non-implementation.⁷⁶ However, there is/was a lurking doubt that major economic powers can refuse to comply with adverse panel report or Appellate Body decision and the WTO dispute settlement will collapse? But the recent WTO decision in the case of United States Bar on Indian Woolen Garments, which was the first case which a developing country, India took to WTO against the temporary safeguards (quota) imposed by the United States since April 1995 on imports of woolen garments such as woolen coats and blouses on the plea that these imports from India has damaged the United States garment industry disapproved the restrictions/quotas imposed by the United States⁷⁷ and blissfully, the United States immediately and unconditionally removed the restriction on the Indian

Woolen imports. The withdrawal of restriction by the United States, therefore, underscores the importance of WTO/DSU as effective and the decisions are abiding on all the countries, rich or poor, small or big. Secondly, WTO/DSU settlements are effective, foolproof and efficacious. WTO panel in this case gave verdict in less than one year which is quite reasonable from all accounts of how long the settlement of international trade dispute takes.

There are some ancillary questions, such as would not the Appellate Body undermine the panel process and prestige? Who will serve the seven person Appellate Body? Would the Appellate Body function as appellate judges/Court? Would the right of appeal delay the settlement of disputes? And would the settlement process/system become too much legalistic and run the risk of formal due process and its attendant risks etc? These question would be answered after the WTO/DSU have been given a fair trial.⁷⁸ As the WTO/DSU is in existence only for a year, the above questions cannot be answered at the present moment.

B. Latches

As already discussed, that international trade dispute normally would be initiated by way of complaints and followed by consultations as and when any member of WTO believes that the legal system (statutes, rules, regulations, custom duties, executive actions, decision of Courts/administrative tribunals or the implementation of treaties) of the member has resulted in some or the other violations of the other member of WTO. If consultations fail, the aggrieved state could set the settlement of disputes procedure under DSU in motion. But the procedure prescribed in the DSU do not provide a time limit after a member becomes aware of the supposed violation. Therefore, there appears to be a lacuna that even though a violation has continued for years together, the member did not think it expedient to bring the complaint before the GATT/WTO.⁷⁹ Thus the WTO/DSU should have provided something like doctrine of latches or stale claims as provided in some municipal legal systems.

C. Applicable Law

Once the settlement of dispute process started, what sources or legal authority are relevant to WTO/DSU, panels and Appellate Body. The general principles of international law codified in the Vienna Convention on the law of Treaties especially Article 31 prescribes that for the interpretation of treaty, a panel should examine the ordinary meaning of the terms of the treaty in the context and in the light of its objectives and purposes but for the purposes of WTO/DSU all the earlier GATT Agreements since 1947 are to be taken into account as they have very vital bearing not only on the WTO/DSU but also on the covered Multilateral Agreements as well as GATT, 1994. For the purposes of applicable law, the GATT Article XXIII and the Tokyo Round of codes such

as Anti-dumping, Customs Valuation are of great importance as these codes have developed a well defined jurisprudence of rights and duties of the parties to these codes. It may also be mentioned here that the legal rights and obligations of the parties have been spread throughout the length and breadth of the Articles of GATT 1947 as amended and incorporated in 1994 and the interpretation of these Articles are *quid-pro-quo* for the WTO/DSU. It is a fact that the jurisprudence of GATT, 1947 did not develop the science of *stare-decisis*, or the doctrine of precedent for the settlement of disputes, yet in the great majority of important cases, GATT settlement mechanism did take help of the earlier GATT decisions and without framing the earlier decisions as precedents, the GATT panels adopted the reasoning of the earlier decisions and frequently also referred to negotiating history, various committees established in course of the working of GATT, 1947 as well as the Havana Conference and ITO Charter.⁸⁰

There is a doubt that although WTO/DSU have provided a comprehensive mechanism of settlement of disputes in international trade, yet the disputes may defy solutions as the themes/objectives of the URMTN are being further diffused and extended as well as the role of the WTO is extended over the areas either newly discovered or carved out of the existing ones. Specifically attention is drawn to the most recent Singapore Ministerial Conference of the WTO members wherein the bargaining and settlement of trade issues between the member states, developed and developing appeared to be tortious and contentious as many developed countries were not only interested to bring in social, labour and other issues in the fold of WTO but were equally emphatic in resorting to actions which would adversely effect the multilateral trading system established by the URMTN. Non-trade issues are also being brought in the WTO which in due course of time may whittled down the importance of WTO.

So far as the covered Multilateral Agreements such as GATT, 1994 including the DSU, GATS and TRIPS and the interpretation of the provisions of the settlement of disputes are concerned, the WTO may find it difficult to develop a uniform and quick jurisprudence as the implementation of these Covered Agreements have been fraught with great opposition from the developing member states. Finally, the WTO/DSU would assume the role of fact finding mediators/judges/arbitrators/dispute settlement procedures may become more legalistic and less pragmatic, as a consequence of which the role of international trade lawyer may be increased. So far the dispute settlement procedures have been essentially handled by the bureaucracy of the members of WTO and with the increased role of panels to collect, sift and apply the law, the role of international lawyers will be profound. The disputing members in the WTO/DSU have to use all legal craftsmanship and technical backup in

case the disputing member is interested to win her case.

In the ultimate analysis, as India is sucked in the system and the legal system of India is already pregnant with instruction to deal with the new challenges posed by the WTO/DSU India should gear itself to face the new and complex disputes likely to arise as a member of international trade regime and globalisation and thoroughly prepare her briefs both in terms of legal reasoning, jurisprudence and technical expertise.

NOTES AND REFERENCES

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- 1. The Bretton-Woods system as conceived after the second world war comprised of IBRD, IMF and ITO. As the ITO could not materialise and a stop-gape arrangement GATT was created, the creation of WTO completes the Bretton-Woods system and may in future years to come substitute ITO. See J.S. Schott, *The Uruguay Round : An Assessment*, INSTITUTE FOR INTERNATIONAL ECONOMICS (Washington D.C., 1994) at 16.
- 2. *Uruguay Round of Multilateral Trade Negotiations* is the eighth round of tariff negotiations held under the auspices of GATT and the AGREEMENT ESTABLISHING THE WORLD TRADE ORGANISATION done at Marrakesh, 15 April 1994. For the text of the results of the *Uruguay Round of Multilateral Trade Negotiations*, See GATT AGREEMENTS (Bombay : World Trade Centre, 1994).
- 3. WTO AGREEMENT, Article III. The Multilateral Trade Agreement on Trade in Goods are found in Annex 1A to the WTO AGREEMENT and consist of the GATT 1994, the AGREEMENT ON AGRICULTURE, THE AGREEMENT ON TRADE RELATED INVESTMENT MEASURES (TRIMS) and various other Agreements. THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) is appended as Annex 1B and the AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY (TRIPS) is Annex 1C to the WTO AGREEMENT. The plurilateral Trade Agreements consist of AGREEMENT ON TRADE IN CIVIL AIRCRAFT, AGREEMENT ON GOVERNMENT PROCUREMENT, INTERNATIONAL DAIRY AGREEMENT, INTERNATIONAL BOVINE MEAT AGREEMENT are embodied in Annex 4 of the WTO AGREEMENT.
- 4. Article XVI (4), WTO AGREEMENT.
- 5. Preamble to the WTO AGREEMENT. See also, Kenneth W. Abbot, *GATT as a Public Institution : The Uruguay Round and Beyond*, 18 BROOK JOURNAL OF INTERNATIONAL LAW (1992) at 31.
- 6. Article IV, WTO AGREEMENT.
- 7. *Id.*, Article IX (2).
- 8. *Id.*, Article IX (3).
- 9. *Id.*, Article IX (1).
- 10. *Id.*, Article IV (2).
- 11. *Id.*, Article IV (5).
- 12. *Id.*, Article IV (6).
- 13. *Id.*, Article IV (3).
- 14. *Id.*, Article IV (4).

15. Article XXV : 1 reads :

'Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Whenever reference is made in this Agreement to the contracting parties acting jointly, they are designated as contracting parties'.

16. For this view, see Kenneth W. Dam, *THE GATT AND INTERNATIONAL ECONOMIC ORGANISATION* (University of Chicago Press, 1977) at 352.17. See John H. Jackson, *WORLD TRADE AND THE LAW OF GATT* (Virginia : The Michie Company, 1969) at 164. GATT Articles and paragraphs are as follows :

II : 5; VI : 7; VII : 1; VIII : 2; IX : 6; XII : 4; XIII : 4; XVIII : 12; XVIII : 16; XVIII : 21; XVIII : 22; XIX : 2; XXII; XXIII; XXV : 1; XXVII; XXVIII : 1; XXVIII : 4; XXXVII : 2.

18. GATT Articles and paragraphs are as follows : II : 5; XII : 4; XVIII : 7; XVIII : 21; XIX : 3; XXIII; XXVII; XXVIII : 3; XXVIII : 4.

19. The balance of the Article X contained obligations with respect to the uniform, impartial and reasonable administration of laws, regulations etc. and the maintenance of tribunals and review procedures for review and correction of administrative action relating to customs matters. See generally, John H Jackson, *Supra* n. 17 at 461-464.

20. GATT BISD 26S/210 at para 3. Various WTO AGREEMENTS for example, the TRIMS and subsidies agreements have also imposed extensive notification requirements upon Members.

21. For an overview on the development of the dispute settlement in the GATT, See John H. Jackson, *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS : CASES, MATERIALS AND TEXT*, 3rd ed. (West Publishing House, 1995) at 327-371; Robert Hudee, *THE GATT LEGAL SYSTEM AND WORLD TRADE DIPLOMACY*, 2nd ed. (New Hampshire : Butterworth, Salem, 1990); Robert Hudee, *ENFORCING INTERNATIONAL TRADE LAW : THE EVOLUTION OF THE MODERN GATT LEGAL SYSTEM* (New Hampshire : Butterworth, Salem, 1993). See also Pierre Pescatore, *The Gatt Dispute Settlement Mechanism*, 27 *JOURNAL OF WORLD TRADE* (1993) at 6-20.22. See GATT, *Analytical Index* prepared by E-U Petersmann (1989) of Article XXIII. Also see, Armin Von Bogdamdy, *The Non-Violation Procedure of Article XXIII : 2, GATT : Its operation and Rationale*, 29 *JOURNAL OF WORLD TRADE* (1995) at 95-111.23. See Amin Von Bogdandy, *Supra* n. 22 at 98.24. See cases referred in John H Jackson, *WORLD TRADE AND THE LAW OF GATT* (Virginia : The Michie Co., 1969) at 181-187. Of importance is the case of *Italian Discrimination Against Imported Agricultural Machinery*, GATT Panel Report adopted on October 23, 1958, BISD, 7TH SUPPL. 60 (1959). Panel noted that it considered whether the violation had caused injury to the UK's commercial interests and whether such injury represented an impairment of benefits.25. c.f. see the case of *U.S. Taxes on Petroleum and Certain Imported Substances*. 34TH SUPPL. BISD 136 (1988). Panel Report adopted on June 17, 1987.26. See Arim Von Bogdandy, *supra* n. 22 at 101.

27. The WTO UNDERSTANDING follows a similar approach.

28. In *Canada-Import, Distribution of sale of certain Alcoholic Drinks by Provincial Marketing Agencies*, GATT BISD 39 S/27 at 74-75, the Panel examined a complex set

of practices which the United States alleged were GATT-inconsistent.

29. *Japan-Restrictions on Imports of Certain Agricultural Products*, 35TH SUPPL. BISD 163 (1989). Panel Report adopted on March 22, 1988.
30. For the text of the UNDERSTANDING, see *supra* n. 2 at 197.
31. See the *WTO Dispute Settlement Mechanism*, GATT FOCUS No. 107, May 1994 at 12.
32. *Supra* n. 22 at 207-208.
33. *Ibid.*
34. One of the main objective of the GATT was to provide a legal framework for enabling the contracting parties to enter into 'reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade.' See Article XVII : 3 of GATT. See also discussion in *United States Restrictions on Imports of Sugar*, GATT BISD, 365/331 at 342.
35. cf Article I of the GATT ensures that the products of all contracting parties would be treated in a non-discriminatory fashion. Article II of the GATT further ensures that tariff concessions would not be negated by the use of taxes or other charges (except in certain circumstances). Article III of the GATT ensures that a product once having entered into the commerce of contracting party, would be accorded the treatment no less favourable than the like domestic product etc.
36. For the text of Articles 3 see *supra* n. 22 at 197.
37. Article IV (3), WTO AGREEMENT.
38. See Appendix 2 to the DSU which lists, the special or additional dispute settlement rules and procedures. There are special rules, in particular, under the Anti-dumping and Subsidies Code. The DSU explicitly provides that DSB Chair may decide what rules and procedures to follow when there is a dispute. Article 12 of the DSU.
39. Article 2, DSU.
40. See *supra* n. 20.
41. Article 4, DSU.
42. *Id.*, Article 4.4. The corresponding consultation provisions in the covered Multilateral Agreements are listed as under :

Article 7, AGREEMENT ON RULES OF ORIGIN; Article 7, AGREEMENT ON PRESHIPMENT INSPECTION; Article 18.6, AGREEMENT ON THE IMPLEMENTATION OF ARTICLE VI OF THE GATT; Article 14.1, AGREEMENT ON TECHNICAL BARRIERS TO TRADE; Article 6, AGREEMENT ON IMPORT LICENCING PROCEDURES; Article 13 and 30, AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES; Article 18.1 and Part C, AGREEMENT ON AGRICULTURE; Paragraph 35, AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES; Article 8, TRADE RELATED INVESTMENT MEASURES; Article 8.4, AGREEMENT ON TEXTILES AND CLOTHING; Article 64, TRADE RELATED INVESTMENT MEASURES; Article 8.8, AGREEMENT ON TRADE IN CIVIL AIRCRAFT; Article VIII : 3, AGREEMENT ON GOVERNMENT PROCUREMENT; Article VII : 7, INTERNATIONAL DAIRY ARRANGEMENT; Article VI : 6, ARRANGEMENT REGARDING BOVINE MEAT.
43. *Id.*, Article 4.7.
44. GATT BISD, 305/129 (1983).
45. GATT BISD 305/140 (1983).
46. GATT BISD 395/128 (1991).
47. *Ibid.*

48. Article 4.11, DSU.
49. *Id.*, Article 5.
50. *Id.*, Article 6.
51. *Id.*, Article 7.
52. *Id.*, Article 8.
53. *Ibid.*
54. *Ibid.*
55. *Id.*, 8 : 10.
56. *Id.*, Article 12 read with Appendix 3 of DSU.
57. *Ibid.*
58. *Id.*, Article 12 : 11.
59. *Id.*, Article 13.
60. *Id.*, Article 15.
61. *Ibid.*
62. *Id.*, Article 17.
63. *Id.*, Article 18.
64. *Id.*, Article 19.
65. *Id.*, Article 21.
66. *Id.*, Article 22.1.
67. *Id.*, Article 22.
68. *Id.*, Article 22.4.
69. *Id.*, Article 22.5.
70. *Id.*, Article 22 : 6 and 22 : 7.
71. *Id.*, Article 22 : 8.
72. *Id.*, Article 22 : 9.
73. *Id.*, Article 26.1.
74. *Ibid.*
75. *Id.*, Article 26.2.
76. William J. Davey, *Dispute Settlement in GATT*, 11 FORDHAM INTERNATIONAL LAW JOURNAL (1987) 51-109.
77. Reported in THE HINDUSTAN TIMES, January 8 (1997) at 1.
78. See William J. Davey, *The GATT Dispute Settlement System : Proposals for Reform in the Uruguay Round*, Paper presented in Workshop on the MTNS OF GATT (1992).
79. The case of *Japan Restrictions on Imports of Certain Agriculture Products*, GATT, BISD, 35 S/163, where the import restrictions remained hidden for decades.
80. See generally, Christopher Thomas. *Litigation Process Under the GATT Dispute Settlement System*, 30 JOURNAL OF WORLD TRADE LAW (1996) 53-81.