Case studies on dispute settlement in the WTO

The Uruguay Round of 1994 was undoubtedly one of the most ambitious rounds of international trade negotiations, since it approved and endorsed new rules to govern international trade, which were born of trust, not only between people and governments, but also in the trust generated in what is negotiated, agreed upon and signed.

Another event, derived from the Uruguay Round, was the creation and establishment of the Dispute Settlement System, whose main characteristics are that of a fairer and faster automation process of the disputes presented by the member countries. Undoubtedly, the existence of such a system to date has contributed to promoting healthier trade relations among all member countries.

It is also noteworthy that in this round international standard were created in new areas such as trade in services and the protection of intellectual property rights; in addition, already existing areas were reinforced, and new markets were promoted.

Due to the above, and the success in the agreed negotiations, resulted in the creation of the World Trade Organization (WTO) in 1995 and replacing the GATT.

Thus, the video in a summarized way intends to make known through two practical cases, how the new Dispute Settlement System works, highlights its effectiveness and its automaticity, without mentioning that the new system tacitly enforces the resolutions and the results issued, therefore, member countries cannot act unilaterally.

The complaints

Before the new Dispute Settlement System, claims arise when a member government considers that another member government has violated the trade rules of the WTO or goes against the interests of its companies, then a claim is filed with the WTO, through of the Dispute Settlement Body (DSB), made up of high-level representatives of all WTO member governments. In general, claims work as follows:

1. The parties involved have meetings and develop a series of consultations to try to find a solution to the complaint reached.
2. Consultations and negotiations have a minimum duration of 60 days.
3. If within 60 days a solution to the claim is not found, the complaining party may request the Dispute Settlement Body to establish a group of independent experts to examine the case in a more timely and detailed manner.
4. The group of independent experts must issue a report on the case, together with the necessary recommendations, this can be done in a maximum period of nine months.
5. Once the final report of the group of experts has been issued, as well as the recommendations, they can be appealed by the complaining parties within a period not exceeding 90 days.
6. The Dispute Settlement Body takes the report of the expert group and that of the appeals body, only if the latter exists.
7. It is important to note that when a WTO rule is violated, the DSB ensures that the disputed measure is brought into conformity with that rule, otherwise sanctions may be established at the request of the complaining party.
8. The Dispute Settlement System established by the WTO is much faster and more efficient than the one established with the GATT.

9. The settlement of a dispute is carried out within a period of 12 to 15 months.
10. The results are concrete; consensus is quickly established.
11. Sanctions are enforced effectively, there is no possibility of establishing any measure unilaterally.

One way in which the new form of resolving trade disputes in the WTO through the DSB is through the presentation of two practical cases, the first of which relates the United States, Venezuela, and Brazil, to the issue of gasoline: and the second, a case dealing with the protection of property rights in musical recordings in Japan.

The case of gasoline

It was the first case solved by the WTO and dates to February 1994, where the United States imposed a regulation with certain conditions on the quality of gasoline sold in the country. The objective of the regulation, issued by the Environmental Protection Agency, was to improve air quality by reducing the pollution emitted by gasoline emissions. The regulation established different standards for local and imported gasoline, which is why, in the first instance, said regulation was challenged by Venezuela, and later by Brazil.

From the legal framework, it was argued that Venezuelan gasoline could not be treated differently once it entered the United States, that is, it could not be discriminated against, since even producing gasoline in Venezuela with the new regulations of the America would be quite expensive. Thus, after several consultations, the Venezuelan government took the case to be resolved by the WTO and request the establishment of a panel, to which Brazil also presented a complaint about the discriminatory aspects of the United States regulation on gasoline.

Once both claims were established, they were reviewed by a panel in April 1995. It should be noted that the group was composed of three independent experts chosen by the complaining parties. The United States argued that they were not discriminating under any circumstance, but that their purpose was to care for the environment, mainly the quality of clean air, since it was an exhaustible natural resource, in addition to preserving human health.

However, in January 1996 the panel confirmed and issued that the imported gasoline had been discriminated against by the United States, therefore, there was no justification for the application of said regulation, even for the sake of environmental care. In turn, and in response to the result obtained, the United States government appealed the result issued by the special group a month later, under the same argument that clean air is an exhaustible natural resource.

Consequently, and in response to the appeal filed by the United States, the appellate group, composed of seven experts in the field of international law and trade, reviewed the legal interpretations of the panel and two months later, issued its ruling and upheld the panel's decision, i.e., that imported gasoline had been discriminated against by the United States.

Thus, the appellate body report and the amended panel report were adopted by the WTO Dispute Settlement Body in May 1996, and the complaining parties were satisfied with the way the dispute was settled.

Finally, the United States had to apply the resolution and modify its regulations, as well as

new regulatory measures, collect comments, hold a public hearing, and publish the new measures established, which was carried out within a period of 15 months and the difference got resolved.

The case of sound recordings

It is a case raised from one of the new spheres of competence of the WTO, which is the protection of intellectual property rights of artists. The TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement requires governments to ensure the protection of copyright, patents, trademarks, through their national laws and practices. One of the first disputes in this area involved Japanese legislation that did not offer protection to recordings made before 1971.

Great artists such as Barbara Streisand, Elvis Presley, Frank Sinatra, the Rolling Stones, the Beatles, and many top artists were legally manufactured in Japan and sold throughout the world, as well as in the Japanese market, so it would have been considered piracy anywhere else. Thus, the artists and the industry presented their complaint to the United States government, consultations were carried out and information was gathered, which resulted in bringing the matter as a political issue before the WTO.

In addition to this, a large part of the productions of the philharmonic orchestras in Europe had also been affected, the famous directors, and the interpreters who had always been heard on records, did not have adequate protection in Japan.

Japan, based on the terms of the TRIPS, as well as other members of the WTO, was obliged to grant retroactive protection until 1946, and this is what the dispute was about. Consequently, the Japanese government was told that its legislation violated its obligations under the TRIPS Agreements, so it had to amend its legislation.

A negotiation process began, where different opinions were raised that took place in Geneva, Switzerland. The United States requested consultations with Japan in February 1996 and three months later, the European community. If after two months of consultations they did not reach a satisfactory resolution to the complaints filed, the United States and the European Union could request the establishment of a panel.

The United States and Japan decided to reach a solution without entering a legal debate, thus postponing the consultations for more than two months. In December 1996, the Japanese government amended copyright law and granted retroactive 50-year protection to sound recordings and performances, prompting the United States and the European Union to notify the Dispute Settlement Body that their dispute with Japan had been resolved.

In financial terms, the resolution of the dispute had significant effects, since before it was resolved, the recording industry around the world was losing 600 million dollars a year in Japan, which meant a loss for the artists, the composers and the musicians who depended on those royalties. In the case of European phonogram producers, they were losing more than €100 million each year. In addition, this arrangement not only benefited the United States and the European Union, but all countries, since the results produced also favored small participants.

The result was wonderful as other countries reviewed their copyright laws and offered a similar level of protection for sound recordings, so the precedent had a positive effect on all

recordings.

So far so good… And, in the future?

The WTO Dispute Settlement System has been an exemplary achievement. The large number of issues and diversity of participants are signs that governments are determined to ensure that their rights and obligations are fully respected. They resist resorting to unilateral measures or bilateral arrangements outside the system. While powerful countries remain the main users of the system, developing countries are becoming more active, like India, for example.

The WTO secretariat already provides advice and legal assistance to developing countries in dispute settlement, even though this means an increased workload for delegations that provide most of the dispute settlement components. Thus, since 1995, more than 170 cases have been filed. About two-fifths of the cases have been resolved, another fifth is pending before a panel or appellate body, and the rest are in consultation.

Now, the biggest challenges of the Dispute Settlement System are the fast increase in the number of cases and the qualitative complexity of those cases brought. The differences are increasingly complex, they mainly focus on the protection of the environment, the health and life of people, as well as the development of regional preference policies. In some cases, finding a solution is difficult.

References

- OMC español. (2019, April 16*). Casos prácticos sobre solución de diferencias en la OMC* [Video file]. Retrieved from https://www.youtube.com/watch?v=EZ0zzmLUfkI