GATT (1947) AND WTO DISPUTE SETTLEMENT SYSTEMS: A COMPARATIVE ANALYSIS

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ABSTRACT

This article shows that the World Trade Organization (WTO) 1995, in comparison to its predecessor the General Agreement on Tariffs and Trade (GATT) 1947, has succeeded in providing its developing country members with a more rules-based dispute settlement mechanism for resolution of disputes. Unlike the dispute process system under GATT 1947, the WTO dispute resolution system encourages rule of law, less subject to political pressure, and more accessible to developing countries, in order to encourage their more participation in the system.

Keywords: Developing Countries, Dispute Settlement System, General Agreement on Tariffs and Trade, World Trade Organization

1. INTRODUCTION

The GATT 1947 dispute resolution system has always been criticized on grounds that the system was based more on diplomacy or power politics, rather than on rule of law, for resolving disputes between the member states, in turn making developing countries reluctant to use the system for their grievances. Given so, this article focuses on comparative analysis between the GATT and WTO dispute resolution mechanisms, aiming to explore the promise that was made to developing countries that the WTO would provide a more rules-oriented Dispute Settlement System (DSS), where rights would prevail over might, to encourage developing countries more

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participation in the WTO DSS. This article begins with an overview of the WTO DSS. Then the article engages in more legalistic features of the WTO DSS, in contradistinction to the dispute process system under GATT 1947, to demonstrate its importance for developing countries.

2. Overview of the WTO Dispute Process

A WTO member state, believing that a fellow WTO member is violating WTO agreements or rules, may initiate a formal WTO dispute process by making a request to the Dispute Settlement Body (DSB) for consultations with the alleged respondent.\(^1\) It is the first mandatory stage of the WTO dispute process system. The countries that are parties to the dispute are expected to engage in negotiations with the aim of settling the matter, and arriving at a mutually agreed solution. The responding country to which the request for consultations is made is required to reply within 10 days, and should enter into consultations within 30 days from the date of receipt of the request for consultations, unless the parties otherwise agree.\(^2\) If the country to whom a request for consultations is made fails to do so, or the consultations fail to produce a mutually agreed settlement within 60 days from the date of receipt of the request, the complaining WTO member can request that the WTO DSB establish a panel to examine the matter under dispute.\(^3\)

The WTO DSB considers the complainant’s request for the establishment of a panel at the first meeting following the request, and establishes such a panel, unless it decides by consensus otherwise.\(^4\) Any other WTO member country (‘third party’) having a substantial interest in a matter before the panel, after notifying its interests to the DSB, is also given an opportunity to be heard by the panel and to make written submissions to the panel, even if it has not already participated in the consultations as a third party.\(^5\)

The WTO panel normally consists of three independent experts, unless primary parties to the dispute agree to a panel of five panelists.\(^6\) The panel reviews factual and legal aspects of the case,
and makes a ruling or report on the matter.\textsuperscript{7} The complainant is required to submit its first submission to the panel prior to the respondent’s submission, unless the panel, after consultations with the parties to the dispute, decides that they should submit their first submissions simultaneously.\textsuperscript{8} Any subsequent written submissions from the parties to the dispute have to be submitted simultaneously.\textsuperscript{9}

By virtue of Article 12.8 of the Dispute Settlement Understanding (DSU), the panel has to issue its final report within six months from the date of its composition, and three months, in cases of urgency, such as in regard to disputes relating to perishable goods. These time limits may be extended, if the panel thinks that the report cannot be submitted within the fixed deadlines. In such a case, the panel has to issue its report within nine months from the date of its establishment, including in cases of urgency.\textsuperscript{10} In practice, however, it often takes 12 months.\textsuperscript{11} In addition, the complainant and respondent can still reach a mutually agreed solution before a ruling is rendered, even if the case has progressed to further stages in the dispute process.\textsuperscript{12}

If either the complainant or the respondent is not satisfied with any aspect of the panel’s ruling, it can make appeal to the Appellate Body (AB). The AB consists of seven members, with three of them serving on each appeal.\textsuperscript{13} Only the primary litigants, not third parties, can appeal a panel report.\textsuperscript{14} The scope of such an appeal is limited to the legal questions in the panel report and developed legal interpretations by the panel.\textsuperscript{15}

An appeal can only be made before the adoption of the panel report, which is 60 days from the date of circulation of the panel report to the members.\textsuperscript{16} The appellant is required to file its written submission on the same day of filing a notice for appeal.\textsuperscript{17} Similarly, the appellee(s) and third-party state(s) have 18 and 21 days, respectively, after the date of the filing of the notice of appeal, to submit their written submissions.\textsuperscript{18} The AB conducts an oral hearing within 30 to 45 days from the date on which a party to a dispute has filed a notice for appeal.\textsuperscript{19} The AB has to complete its proceedings within a maximum of 90 days from the date the notice of appeal was filed.\textsuperscript{20}
Once the proceedings are completed, the AB then issues its report or ruling, which is final and must be accepted by both the parties, unless the DSB decides otherwise.\textsuperscript{21}

If the AB’s ruling favours the complainant, or the complainant obtains a favourable ruling from the panel and the respondent does not appeal it before the adoption of the panel report, the dispute proceeds to the implementation phase. The WTO DSB supervises the implementation of rulings and recommendations of the panel or the AB’s reports. If the immediate implementation is not practicable, the respondent is given a reasonable period of time to do so. A period for implementation is considered reasonable if it is proposed by the concerned member and approved by the DSB,\textsuperscript{22} or in absence of such approval, the applicable period is mutually agreed by the disputing parties.\textsuperscript{23} Failing such approval or mutual agreement of the parties, the reasonable period is determined through arbitration.\textsuperscript{24} The period determined through arbitration ‘to implement panel or [AB’s] recommendations should not exceed 15 months from the date of adoption of a panel or [AB’s] report. However, that time may be shorter or longer, depending upon the particular circumstances.’\textsuperscript{25}

If the panel or AB decides in favour of the complainant and the respondent fails to bring its measures or policies into compliance within a reasonable period of time, the complainant can seek one of two temporary remedies against the respondent. These remedies include: (1) compensation; and (2) the suspension of concessions or other obligations (‘retaliation’) under the agreements covered.\textsuperscript{26} Compensation is voluntary, and if agreed to by the disputing parties, must be consistent with the applicable agreements.\textsuperscript{27} If the complainant and respondent do not agree upon satisfactory compensation, the complainant may request authorisation from the DSB to retaliate against the non-complying respondent.\textsuperscript{28} Neither compensation nor retaliation, however, is preferred to the respondent’s full compliance with the rulings or recommendations of the WTO DSB.\textsuperscript{29}
3. More Legalistic Features of the WTO Dispute Process

The following section considers the more legalistic features of the WTO DSS, as opposed to its predecessor, the GATT 1947.

3.1 Exclusive and Compulsory Jurisdiction

Unlike GATT 1947, in addition to provision for precise time frames in which to settle disputes, the WTO DSU provides member states with an exclusive and compulsory dispute resolution system to resolve such disputes. If one WTO member accuses another member of infringing its trade rights in violation of WTO rules, the accusing member cannot take unilateral action against the other member to redress the issues. This distinguishes the WTO dispute system from GATT 1947. Under Articles 23(1) and 23(2)(a) of the DSU, and paragraph 7.43 of the Panel’s report in the US — Section 301–310 of the Trade Act 1974 (US — Section 301 Trade Act) dispute, an aggrieved WTO member state has recourse to the WTO DSS, in accordance with the rules and procedures of the DSU, to seek a remedy under the WTO agreements to the exclusion of any other dispute resolution system. Such exclusivity does not mean that WTO country members cannot settle their trade issues by mutual agreement and without resort to the WTO DSS, for example, through backdoor diplomacy. Rather, as opposed to the GATT 1947, a WTO member is not allowed to take the law into its own hands by acting unilaterally against another WTO member. According to the WTO's first Director-General, Renato Ruggiero:

"… [N]o review of the achievements of the WTO would be complete without mentioning the Dispute Settlement system, in many ways the central pillar of the multilateral trading system and the WTO's most individual contribution to the stability of the global economy … By reducing the scope for unilateral actions, it is also an important guarantee of fair trade for [less powerful countries]."

Furthermore, use of the WTO DSS is compulsory, insofar as each WTO country member is assurred access to the WTO dispute
settlement process. Unlike the GATT 1947, no respondent country, whether strong or weak, can avoid the WTO DSS’s jurisdiction, or block the dispute resolution process, except with the consensus of the WTO DSB, which is unlikely to happen in practice.  

3.2 The Role of Consultations

Like the GATT 1947, the WTO DSU retains mandatory consultations between the parties to enable them to settle the issues in dispute before resorting to the panel. By virtue of Article 3.7 of the DSU, the WTO clearly favours a bilateral mutually agreed solution as the preferred mode for the resolution of disputes between member states. Even when consultations have failed to produce a mutually agreed solution, it remains open for the parties to resolve the matter inter se through negotiations at any later stage in the proceedings. The drafters of the WTO DSU, thus, intended to prefer, promote and enhance mutually agreed solutions for settling disputes over adjudication by panels or the AB.

A mutually agreed solution ordinarily requires fewer resources, and is generally cheaper, quicker and more effective, including by enabling the parties to maintain friendly diplomatic relations, as well as in enabling the complainant to secure better concessions from the respondent. This also benefits those small or poorer economies that traditionally lack resources to pursue a WTO action, and may be reluctant to initiate WTO proceedings against their powerful trading partners due to fear of compromising their trading relations. While the GATT 1947 also contained options or provisions for settling disputes through consultations, but its non-adjudicatory procedures were not well regulated, and were tinged with an adjudicative character. For instance, there were no fixed timeframes under the GATT 1947 for the settlement of disputes, and the respondent could more easily block the dispute resolution process. As a result, contrary to the GATT 1947, the parties to the WTO consultations are more aware that, if negotiations reach an impasse, the WTO judicial process can automatically take over, thereby adding impetus to
consultations between the parties. As of 2 November 2009, according to the ex-WTO Director General, Pascal Lamy:

Of the 400 WTO cases filed so far, approximately half have eventually been settled directly between the parties, under the system's mandatory consultation requirements, without going to litigation. Of the remainder, 169 have been the subject of panel and, where appealed, Appellate Body proceedings, 17 are currently in adjudication, and 12 are still the subject of active consultation between the parties.

This high rate of mutually agreed settlements rises even further, if those trade disputes, which have settled amicably or mutually between the member states without bringing to the notice of WTO, are also added in the list.

### 3.3 The Role of the Panel and Appellate Body

Contrary to the GATT dispute process system, the WTO DSU provides for the establishment of an independent AB that hears appeals against the panel reports on legal grounds, a process which is regarded by WTO as one of the significant achievements of the Uruguay Round. By introducing AB as an integral part of the WTO dispute settlement mechanism, the complainant or the respondent, that is dissatisfied with any aspect of the panel’s report, is not only given an opportunity to challenge the panel’s ruling in the AB. The panel is also encouraged to include more extensive legal reasoning in its rulings. This is distinct from the GATT dispute process system in which panels had a more diplomatic than a legal function, as the task of panels was confined mainly to providing solutions in their reports on which both the complainant and respondent could agree. The GATT panel reports, thus, were largely the outcome of political negotiations and mediation, rather than the application of greater legal reasoning.

This trend originating with the GATT 1947 changed with the introduction of the WTO DSU, particularly with the establishment of an independent AB. WTO panels are compelled to provide more
legal reasoning in their reports to avoid the risk of them being modified by the AB. The creation of AB, thus, further promotes a greater degree of legal analysis under the WTO dispute settlement mechanism, and the development of a more effective system for the resolution of disputes than under the GATT. According to Lacarte-Muró and Gappah, the assertion:

… [T]hat the WTO dispute settlement system provides an opportunity for economically weak smaller countries to challenge trade measures taken by more economically powerful Members … deserves some emphasis. The Appellate Body is an integral part of a rules based ‘judicialized’ dispute settlement mechanism which ensures transparency and predictability. This system works to the advantage of all Members, but it especially gives security to the weaker Members who often, in the past, lacked the political or economic clout to enforce their rights and to protect their interests.

3.4 Implementation via Negative Consensus

One of the major structural weaknesses of the dispute resolution system under GATT 1947 was the requirement for the ‘positive consensus’ of all GATT member states, including the disputing parties, in reaching or adopting a decision. By virtue of this rule, any individual GATT member state, including the losing party, could object and block the establishment of a panel, the adoption of a panel report, or the authorisation of countermeasures against the non-implementing respondent. In other words, the losing party had a legitimate power to formally veto or block the dispute process of GATT 1947. This practice raised questions about the effectiveness of GATT 1947’s dispute system as an ideal forum for the settling of disputes. Indeed, the WTO itself has acknowledged that a significant number of cases were not brought before the GATT 1947 because of the complainant’s concern about the likelihood of the respondent exercising such a veto power. Well-resourced member countries, such as the United States (US) and the European Union (EU),
especially in the 1980s, increasingly blocked unfavourable GATT panel reports.\textsuperscript{51}

In order to address this situation, the WTO DSU replaced the rule of ‘positive consensus’ with the rule of ‘negative consensus’. In effect, by adopting a rule of negative consensus, the veto by one member has replaced by the rule that a decision must be adopted or approved, unless there is a consensus of all WTO member states not to do so. As a result, a WTO member can no longer block the establishment of a panel or AB, the adoption of their reports, or the authorisation of countermeasures against the non-implementing respondent, unless there is a consensus of the DSB or all WTO member states against it, which is unrealistic and unlikely to occur in practice.\textsuperscript{52} Simply put, developed countries can no longer veto decisions that are unfavourable to them in cases in which the complainant is a developing country.\textsuperscript{53} This is because the WTO dispute process, including the establishment of panels and the AB, the adoption of their reports and the authorisation of sanctions against non-complying respondents, is applied automatically, or as a matter of course.

3.5 Private Individuals as a Part of Government’s Delegation

Unlike the GATT 1947, WTO DSU allows outside private lawyers to represent a member state in the dispute settlement process. Complaining parties in the EC — Regime for the Importation, Sale and Distribution of Bananas (EC — Bananas III) dispute, WTO/DS/27, submitted that private lawyers or counsel should not be allowed to represent a member state, as a part of its delegation, during the WTO dispute settlement proceedings.\textsuperscript{54} According to the complainants, from the earliest years of GATT 1947, presentations in the dispute proceedings ‘have [always] been made exclusively by government lawyers or government trade experts’.\textsuperscript{55} They argued that a dispute is between the member states and the DSU safeguards the privacy of the disputing parties during the dispute process.\textsuperscript{56} They added further that, if private lawyers are allowed to represent a member state in WTO proceedings; the WTO has to resolve a
number of questions concerning confidentiality, conflicts of interest, the ethical duties of lawyers and the representation of multiple governments. However, the AB in the dispute (the EC — Bananas III dispute) made it clear that nothing in the WTO agreements, customary international law, or the international tribunals’ prevailing practice prevents a WTO member from deciding who should be a part of its delegation in the WTO dispute settlement proceedings. Simply put, as opposed to the GATT 1947, the WTO DSS allows its member countries to hire and rely on the services of outside private legal counsel to represent them during WTO dispute proceedings. In fact, the appearance of private legal counsel in the WTO DSS as a part of a government’s delegation, including their assistance in drafting submissions and making arguments, is a common practice in WTO litigation. This practice of governments relying on the services of outside private lawyers is particularly significant for those countries with a scarcity of domestic trade lawyers, and the lack of sufficient finances. These countries prefer hiring the services of specialized foreign trade lawyers on a case-by-case basis, rather than retain them as government employees on a relatively long-term basis.

3.6 The Role of the Advisory Centre on WTO Law

Considering poor countries’ limited financial resources to meet the legal costs of WTO litigation, the Advisory Centre on WTO Law (ACWL), an organisation independent from the WTO, pursuant to the Agreement Establishing the ACWL, was established in 2001. This organisation did not exist during the era of GATT 1947. The ACWL provides legal services to WTO developing and Least Developed Country (LDC) members at concessionary or subsidized rates in WTO dispute settlement proceedings. The ACWL’s services include providing legal opinions on WTO matters, drafting of legal documents, making submissions to the panel or AB, and appearing on behalf of clients before the WTO panels or the AB. The ACWL also conducts short training courses and hosts internship programs on WTO law for the delegates, including trade lawyers, from its
developing and LDC member nations.\textsuperscript{61} Pascal Lamy, WTO ex-Director General, has said:

... [B]y ensuring that the legal benefits of the WTO are shared among all Members, the ACWL contributes to the effectiveness of the WTO legal system, in particular its dispute settlement procedures, and to the realisation of the WTO’s development objectives.\textsuperscript{62}

As of March 2016, the ACWL’s developing country membership consisted of 32 WTO member nations.\textsuperscript{63} The ACWL classifies developing countries into three categories (namely A, B and C) ‘on the basis of their share of world trade with an upward correction reflecting their per capita income’.\textsuperscript{64} The rationale behind dividing developing countries into three different groups is to determine a developing country’s contribution (one-off fee on joining) to the ACWL’s Endowment Fund, and to estimate the rate of fees payable by a developing country for the services rendered to it by the ACWL.\textsuperscript{65} All the WTO LDCs are entitled to its services without having to become members.\textsuperscript{66}

While developed countries are not entitled to its services, they can also become members.\textsuperscript{67} At present, eleven developed WTO countries are members, and have made substantial contributions to the ACWL’s endowment fund.\textsuperscript{68} To date, the ACWL has provided developing and LDCs with its legal assistance at concessionary rates in around 50 WTO disputes, including WTO consultations.\textsuperscript{69}

3.7 Special and Differential Treatment Provisions

The stage of development of developing countries in determining their Special and Differential Treatment (S&DT) was an important part of the GATT 1947 and remains so under the WTO.\textsuperscript{70} The WTO S&DT provisions, which have evolved throughout the history of the GATT 1947, are considered to be central to recognising the developmental needs of developing countries, including LDCs.\textsuperscript{71} By recognizing gaps in economic development between developed and developing countries, these S&DT provisions give developing
countries special rights, ensuring that they are treated more favourably than other member states in the WTO system, in order to benefit fully from the multilateral trading rules.72

At present, WTO law consists of roughly 150 S&DT provisions, aiming

…… to reduce the unequal capacity of developing countries to participate on a proportionately beneficial basis in international trade, by going beyond formal guarantees of equality and authorizing positive steps to promote developing countries’ capacity.73

As under other WTO agreements, the WTO DSU also contains specific provisions to treat developing countries on special and differential grounds in the WTO DSS. Taking into account the special needs and limitations of the developing countries, including LDCs, in the context of WTO litigation, the WTO DSU provides them with S&DT at almost every stage of the dispute process.74 For instance, the DSU says that special attention needs to be given to the particular problems and interests of a developing country during consultations with other member states.75 Similarly, when a dispute is between a developing country and a developed country, at the request of the developing country to the dispute, the panel has to include at least one panellist from a developing country.76 In order to address legal costs and the concerns of a developing country in the context of WTO litigation, the DSU requires the Secretariat to make available a qualified legal expert from the WTO technical services to assist a developing country that is a party, on the latter’s request.77 Simply put, in order to further enhance the rule of law in the dispute resolution process, and to encourage greater participation by developing countries in the WTO DSS, the DSU contains special provisions, promising to treat developing countries on preferential grounds during the dispute process, in consideration of their state of economic development.
4. Conclusion

Contrary to the GATT 1947, WTO contains a dispute resolution system that is more legalistic in nature, or based on rules of law. This is because, unlike the GATT 1947, the WTO DSS provides precise time frames for the resolution of disputes. The respondent can no longer block the establishment of panels and the adoption of their reports, or cannot block the dispute process system. Similarly, there is AB hearing appeals against the panel decisions, and the respondent’s non-compliance with rulings of the WTO DSB is followed by compulsory sanctions. Such a system, that strongly emphasizes on the rule of law, is considered particularly significant for developing countries that usually lack other means, such as political or economic power, to defend or pursue their interests in absence of a rule of law tradition.

Notes and References

2 Ibid 4(3).
3 Ibid arts 4(3), 4(7). Note that, in cases of urgency, such as those involving perishable goods, the disputing parties are required to enter into consultations within 10 days from the date of receipt of the request for consultations. If the consultations fail to settle the issue within 20 days from the date of receipt of the request, the complaining party can make a request for the establishment of a panel to examine the issue under dispute. See at DSU art 4(8).
4 Ibid art 6(1).
5 Ibid art 10(2).
6 Ibid arts 8(1), 8(2), 8(5).
7 Ibid art 11.
8 Ibid art 12(6).
9 Ibid.
10 Ibid art 12(9). Note that the panel can suspend its work at the request of the complainant for a maximum period of 12 months. The reason behind such a suspension is to allow the disputants to reach a mutually agreed solution. However, if the suspension period exceeds 12 months, the panel will lose its establishment authority. In such a case, if the matter remains unresolved through
consultations, the dispute proceeding must be started all over again. See Ibid arts 3(7), 12(12); World Trade Organization, *The Process — Stages in a Typical WTO Dispute Settlement Case* <https://www.wto.org/english/tratop_e/dispu_e/disps_settlement_cbt_e/c6s3p5_e.htm>.


12 See *DSU* arts 11, 12(7), 12(12); World Trade Organization, *Dispute Settlement without Recourse to Panels and the Appellate Body* <https://www.wto.org/english/tratop_e/dispu_e/disps_settlement_cbt_e/c8s1p1_e.htm>.

13 *DSU* art 17(1).
14 Ibid art 17(4)
15 Ibid art 17(6).
16 Ibid art 16(4).
18 Ibid rr 22(1), 24(1).
19 Ibid r 27(1).
20 *DSU* art 17(5).
21 Ibid art 17(14).
22 Ibid art 21(3)(a).
23 Ibid art 21(3)(b).
24 Ibid art 21(3)(c).
25 Ibid.
26 Ibid art 22(1).
27 Ibid.
28 Ibid art 22(2).
29 Ibid art 22(1).

31 *DSU* art 23(1) reads:

When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they
shall have recourse to, and abide by, the rules and procedures of this Understanding.

32 Ibid art 23(2)(a) reads: …. Members shall … not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding.


36 DSU art 3(7) reads: 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….

37 See above n 12.


42 Ibid.


46 Ibid.

47 Ibid.


49 Zangl, above n45; World Trade Organization, Historic Development of the WTO Dispute Settlement System <http://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c2s1p1_e.htm>.

50 World Trade Organization, Historic Development of the WTO Dispute Settlement System, above n49.


53 Kufuor, above n35, 136.

54 Appellate Body Report, European Communities — Regime for the Importation, Sale and Distribution of Bananas, WTO Doc WT/DS27/AB/R (9 September 1997) [9].

55 Ibid.

56 Ibid.

57 Ibid.

58 Ibid [10]–[12].
59 Agreement Establishing the Advisory Centre on WTO Law, opened for signature 30 November 1999, 2299 UNTS 249 (entered into force 15 July 2001) (‘Agreement Establishing the Advisory Centre on WTO Law’).

60 Ibid art 2. See also Advisory Centre on WTO Law, Legal Advice<http://www.acwl.ch/legal-advice/>; Advisory Centre on WTO Law, Dispute Settlement <http://www.acwl.ch/dispute-settlement-introduction/>.

61 Agreement Establishing the Advisory Centre on WTO Law art 2; Advisory Centre on WTO law, Training<http://www.acwl.ch/training-introduction/>.


63 Advisory Centre on WTO law, Members<http://www.acwl.ch/members-introduction/>.

64 Agreement Establishing the Advisory Centre on WTO Law annex II.

65 Members in category C pay US$50 000 to the Endowment Fund, and US$100 per hour for the ACWL’s legal services. Members in category B pay US$100 000 to the Endowment Fund, and US$150 per hour for the ACWL’s legal services. Members in category A pay US$300 000 to the Endowment Fund, and US$200 per hour for the ACWL’s legal services. LDCs are exempted from contributing to the ACWL’s Endowment Fund to use the ACWL’s services. Additionally, they can access ACWL’s legal services at US$25 per hour: Agreement Establishing the Advisory Centre on WTO Law, annexes II–IV.

66 Advisory Centre on WTO law, Members, above n63.

67 Ibid.

68 The ACWL’s developed country members include: Australia, Canada, Denmark, Finland, Ireland, Italy, Netherlands, Norway, United Kingdom, Sweden and Switzerland. Each ACWL developed member state has contributed at least US$1 million to the Endowment Fund or to the ACWL’s annual budgets or to both; ibid; Advisory Centre on WTO law, Organisational Structure<http://www.acwl.ch/organisational-structure/>; Agreement Establishing the Advisory Centre on WTO Law annex I.

69 For a complete list of the disputes in which the ACWL has provided its legal assistance, see Advisory Centre on WTO Law, WTO Disputes <http://www.acwl.ch/wto-disputes/>.

noteworthy that, while the old GATT 1947 preamble recognizes the objective of ‘raising standards of living’, the WTO went one step further by also recognising the ‘need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development’: Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) Preamble.

71Mitchell, above n70, 446–50; Keck and Low, above n70, 3–6; Whalley, above n70, 1066–73.
72 See above n71.
74On WTO DSU special rules for developing countries, see, eg, DSU arts 3(12) (on the invoking of the Decision of 5 April 1966 (BISD 14S/18), as an alternate to DSU arts 4–6, 12); DSU art 4(10) (regarding consultations); DSU arts 8(10), 12(10)–(11) (regarding the panel stage); DSU arts 21(2), 12(7) (regarding implementation of the WTO adopted recommendations or rulings); DSU arts 27(2)–(3) (regarding the legal assistance from the WTO Secretariat). See also Andrea M Ewart, ‘Small Developing States in the WTO: A Procedural Approach to Special and Differential Treatment through Reforms to Dispute Settlement’ (2007) 35(1) Syracuse Journal of International Law and Commerce 27, 42–3.
75DSU art 4(10).
76 Ibid 8(10).
77 Ibid 27(2).