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BETWEEN RULES AND NEGOTIATION: BRAZIL IN THE WTO DISPUTE SETTLEMENT MECHANISM

ENTRE NORMAS Y NEGOCIACIÓN: BRASIL EN EL MECANISMO DE SOLUCIÓN DE CONTROVERSIAS DE LA OMC

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Abstract: The purpose of the study is to analyze the functioning of the dispute settlement of World Trade Organization (WTO) bodies, namely the Panels and the Appellate Body. If the disputing parties emphasize the legal solution, the central question is anchored in the application of the rules and the effectiveness of decisions regarding the divergent claims of litigants. Therefore, we will show how the Dispute Settlement Body has combined diplomatic logic, favoring direct negotiation between litigants, with the judicial logic, reinforcing procedural guarantees and producing decisions that are binding on the parties to the dispute. Also, we will highlight the importance of legal interpretation in three specific cases,

considering Brazil's participation in commercial litigation. It should be noted that, once the dispute has been settled, case law is not necessarily binding on future disputes, but it is expected to be observed in similar cases, creating the expectation that the applicable rules will be interpreted in the same way, increasing predictability and the legal certainty of the multilateral trading system.

Keywords: Dispute Settlement – Interpretation – Multilateralism – Trade Policy – World Trade Organization.

Resumen: El objetivo del estudio es analizar el funcionamiento del mecanismo de solución de controversias de los órganos pertenecientes a la Organización Mundial del Comercio (OMC), a saber, los Paneles y el Órgano de Apelación. En los casos en que las partes interesadas enfatizan la vía de la adjudicación, la cuestión central se ancla en la aplicación de las normas y en la eficacia de las decisiones respecto a las pretensiones divergentes de los litigantes. Por consiguiente, mostraremos cómo el Órgano de Solución de Controversias ha combinado la lógica diplomática, privilegiando la negociación directa entre las partes, con la lógica jurisdiccional, reforzando las garantías procesales y produciendo decisiones vinculantes para las partes en disputa. Asimismo, se evidenciará la importancia de la interpretación jurídica en tres casos específicos, considerando la participación de Brasil en litigios comerciales. Cabe destacar que, una vez resuelta la controversia, la jurisprudencia no tiene necesariamente carácter vinculante para disputas futuras, aunque se espera que sea observada en casos semejantes, generando la expectativa de que las normas aplicables sean interpretadas de forma coherente, lo que contribuye a aumentar la previsibilidad y la seguridad jurídica del régimen multilateral de comercio.

Palabras clave: Interpretación – Multilateralismo – Organización Mundial del Comercio – Política Comercial – Solución de Controversias.

Introduction

With the thickening of the legality of international law, there has been a change of logic in the evolution of international negotiations. If previously conflicts were resolved mainly by the use of force, through unilateral sanctions, or through diplomatic channels, now they are more guided by a legal logic, with rules specifically created for the resolution of international disputes (rule oriented system).

Specifically in the field of International Economic Law, the GATT, created in 1947, did not have as its central objective the promotion of an adequate method for the resolution of disputes, and only Articles XXII and XXIII devoted attention to the resolution of disputes. Article XXII, §1 provided for the possibility of consultations, as follows:

Each Contracting Party shall consider with understanding the representations addressed to it by any other Contracting Party and shall consult with respect to such representations in so far as they concern matters relating to the application of this Agreement.

For its part, Article XXIII(2) provided for panels to be set up and penalties to be imposed if

the Contracting Parties concerned do not reach a satisfactory agreement within a reasonable time, or if the difficulty is one of those provided for in § 1(c) of this Article, the matter may be referred to the Contracting Parties. The Contracting Parties shall, without delay, initiate an investigation into any matter referred to them and, if they consider it appropriate, shall make special and appropriate recommendations to the Contracting Parties which they consider interested, or shall lay down rules on the matter. […] If they consider that the circumstances are sufficiently serious to justify such a measure, they may authorise one or more Contracting Parties to suspend, with respect to such other Contracting Party or Parties, the application of any concession or other obligation resulting from the General Agreement the justified suspension of which they shall examine, taking into account the circumstances.

As we can see, in the GATT, there was a predominance of diplomatic dispute resolution, with consultation among the members to find a solution to the case, and without recourse to

sophisticated legal instruments. If the consultation failed, investigations would begin to recommend a change in the defendant's trade policy and in its condemnation by the contracting parties. However, such a system was severely exclusionary, as more powerful countries could impose their will on less developed nations (power oriented system).

In this sense, diplomatic and political negotiations were mainly guided by the use of force and influence, so that the asymmetry of power made it possible for economically and politically stronger states to impose their interests, fighting for the hegemony of the international system. Thus, International Economic Law was the result of political negotiations between states, and the conflict of interests and difference in power increased the instability of the international system, where "stronger countries used the asymmetry conferred by the economic factor to impose new regulatory systems on weaker countries" (VARELLA AND SILVA, 2006, p.32), which strongly contributed to the maintenance of world inequality.

At first, it was the parties that made up the Panel to analyze the dispute, a fact that changed only in 1955, with the introduction of the panel system. As a result, it was forbidden for the parties to the dispute to participate in the solution of the demand, in addition to mitigating the weight of the major powers on the negotiation process. From that moment on,

there has been a continuous advance towards deepening the institutional framework of the GATT dispute settlement mechanism. Gradually, purely diplomatic methods give way to more complex jurisdictional forms, aimed at settling disputes through the application of rules by an impartial third party (AMARAL JÚNIOR, 2008, p.94).

In the 1970s, there was an increase in protectionist measures in the international economic system, which increased the number of requests for the establishment of Panels. With this, GATT gradually evolved into an increasingly jurisdictionalised system, which aimed especially at equal treatment in the resolution of disputes, without privileges or discrimination, thus

favoring the pursuit of justice and equity (DAVEY, 2002, p. 249)[2]. Already in the 1980s, a period marked by the further strengthening of protectionism, litigation increased severely – mainly on the part of the United States, which refused to comply with the recommendations made by the Panels, which limited the effectiveness of the dispute settlement system.

Consequently, the need to reform the dispute settlement system was established, reiterating that compliance with the rules is indispensable to maintain the reliability of the system. Thus, during the Uruguay Round, which began in 1985, discussions began on the dispute settlement model to be applied in GATT, which was consolidated with the creation of the WTO, resulting from the last round of GATT negotiations, the Uruguay Round.

With the establishment of the WTO, the dispute settlement system was improved, strengthening the context through pre-defined rules, so that the Dispute Settlement Body became one of the main international instruments for dispute resolution, and especially the most important in the field of International Economic Law.

Based on these initial considerations, the objective of this study is to understand the functioning of the peaceful settlement of disputes within the WTO, knowing the basic rules and procedures that regulate international trade from the bodies that participate in the resolution of conflicts, as well as promoting a qualitative and legal evaluation of Brazil's participation in the Dispute Settlement Body.

To this end, first of all, the stages of the dispute settlement procedure will be identified, such as consultations, the Panels (Special Groups), the Appellate Body, the Supervision and Application of Recommendations and Decisions, and the Compensation and Suspension of Concessions. Secondly, the study will examine Brazilian participation as an integral part of the WTO dispute settlement system in relation to trade in goods, considering not only cases in which specific measures inconsistent with the WTO agreements were involved, but also systemic measures whose results affected the jurisprudence of the Dispute Settlement Body

(DSB) based on the interpretation of the Panels and the Appellate Body.

To this end, three specific cases were selected and analysed: the dispute between the European Communities (EC) and Brazil about the change in the tariff classification of salted chicken (EC-Chicken Cuts), the conflict between Brazil and the United States in relation to the agricultural subsidies granted by the U.S. government to its producers (US-Upland Cotton) and the case of refurbished tires, in which the EC brought actions against Brazil that acted as a defendant (Brazil-Retreaded Tyres). These results, as will be seen in the course of the study, demonstrate the importance of the legal interpretation made by the Panels and the Appellate Body, which generated its transformation into jurisprudence to be followed in future cases.

1. Characteristics of the WTO dispute settlement system

Despite the regulation of international relations in the field of economics made by GATT/WTO, there can still be several conflicts between the subjects of international law, being necessary the solution of controversies. The WTO is the specific political body for the solution of conflicts of International Economic Law. It is equivalent to the procedure of a court or court of justice, previously prioritizing that the conflicts are resolved in a diplomatic manner, through the celebration of consultations and mediation between the parties to the conflict.

The Agreement Establishing the WTO provided for the creation of a dispute settlement mechanism, and the rules and procedures governing the settlement of differences are contained in the “Understanding on Dispute Settlement” (UDS – Annex 2 to the WTO Agreement). The UDS consists of 27 articles and 4 appendices, materializing the body’s dispute settlement mechanism. Appendix 1 of the UDS lists the covered agreements for the conduct of dispute settlement, whose general procedures should be applied to the extent necessary, as well as the specific rules for each covered agreement. They are: Agreement Establishing the WTO; Multilateral Trade Agreements (on trade in goods, services, intellectual

property rights related to trade, understanding of rules and procedures on dispute settlement); and Plurilateral Trade Agreements (on trade in civil aircraft, on government procurement, on dairy products, and on the international beef agreement).

As a result, the transition from a predominantly diplomatic system to one organized around structured legal rules, with clearly defined stages and a stricter discipline regarding the time to resolve the dispute, was completed.

How, then, does the controversy arise in the WTO? According to Silveira (2007, p. 70-81), it emerges, firstly, when another member country violates rules or commitments; or, secondly, when a member country adopts measures contrary to previously consolidated commitments; and finally, when there are other complaints against fair trade practices that do not fall into the two previous categories.

Thus, the application of dispute resolution is the responsibility of the *Dispute Settlement Body* (DSB), which has aimed, from the outset, to combat excessive fragmentation, procedural delays and non-compliance with panel recommendations and decisions – considered as the negative points of GATT. Another change of great magnitude consisted in the definition of deadlines for all stages of the procedure, which shortened its duration.

But, above all, the most significant change that occurred in relation to the old GATT mechanism was the inversion of the consensus rule. In GATT there was a positive consensus, in which the procedure could be obstructed if only one country (which could be the one involved in the controversy) manifested itself in this sense. This possibility, in most cases, made the effective functioning of the dispute settlement mechanism unfeasible. In the WTO, on the other hand, the Panel's or Appellate Body's report, as well as the arbitration report, will only not be approved if all members, through a negative consensus, so wish. Thus, "the report will be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report," as

stated in Art. 16, §4.

The function of the WTO DSB is, according to article 3, §2, “to bring security and predictability to the multilateral trading system”, whose regulatory system aims at speed, efficiency and confidence to resolve disputes and to enforce the decision taken, making the trading system more secure and predictable. Thus, the member who had his right violated is allowed to appeal to the organization for the offender to comply again with the provisions agreed upon, and provide that the offended state applies a penalty if the party that offended does not comply with the decision made by the WTO.

The system also has the function of preserving the rights and obligations of members within the parameters of the agreements covered, clarifying the existing provisions of those agreements in accordance with the current rules of interpretation of public international law. (Art. 3, §2). This function is essential, because although rights and obligations are established through negotiation, often the language, written in general terms, is difficult to understand, leaving room for different interpretations, which must be carried out in accordance with public international law, based on the current rules of the Vienna Convention on the Law of Treaties. However, decisions and recommendations “may not promote the increase or decrease of rights and obligations defined in the agreements covered” (Ibid.), i.e. they may not modify the rules already negotiated by the members.

According to art. 3, §7, the resolution of disputes is considered to be the main objective of the DSB, and a mutually acceptable solution consistent with the agreements is preferred, favouring the peaceful settlement of disputes by diplomatic means. If a mutually acceptable solution is not reached,

the first objective of the dispute settlement mechanism will generally be to achieve the elimination of the measures in question if they are found to be incompatible with the provisions of any of the agreements covered (Ibid.).

If there is still no agreement, the DSB should promote compensation from one party to the other, or suspend, as a last resort, the application of concessions.

Based on these considerations, we can highlight that the procedure of the WTO dispute settlement body has three stages (or means of peaceful dispute resolution): the diplomatic, the judicial (or semi-judicial) and the coercive.

Initially, the use of diplomatic means is mandatory, where,

during consultations held in accordance with the provisions of a covered agreement, Members shall seek a satisfactory resolution of the matter before resorting to other measures provided for in this Understanding (Art. 4, §5),

with reasonable time-limits laid down by the parties and with the possibility and urgency in the case of perishable goods. It should be noted that, in the WTO, the consultation procedure leads to speed, lower costs and satisfactory results.

If an effective solution to the dispute through consultation remains impracticable, the Panels (or Special Groups), the first body to act in court, are established to assist the DSB in the performance of its obligations through an objective assessment of the matter involved in the case presented. In the panel, if one of the parties involved (excluding third parties) does not agree with the final report established, the decision can be appealed to the Appellate Body. If the Panel or Appellate Body report is adopted, the member who violated the obligations notifies the DSB of the measures that will be taken to facilitate compliance with the resolution.

In the third phase of the process, the resolution, with its recommendations, is applied, with the possibility of coercive adoption of sanctions if the losing party does not comply with the resolution. It is expected that the infringer will not hesitate to remove the measure incompatible with the covered treaties. However, if this is not the case, there may be

compensation and even the possibility of suspending for a certain period the application of concessions or other obligations established in WTO agreements, ensuring compliance with the violated rule by means of sanctions that remove the possibility of the violating member reaping the benefits arising from the interdependence of the agreement.

Participants in the system are the members of the WTO, i.e. the independent states and territories represented by their governments, which may participate as parties or third parties. However, only members can initiate the process, excluding action by the WTO itself, the Secretariat, observer members, international organizations, as well as companies or citizens[3]. The system and exclusive jurisdiction are mandatory, because when a member has a conflict with another member related to WTO rules, it must adopt, on a mandatory basis, the organization's dispute settlement system.

2. Bodies participating in the settlement of disputes in the WTO

WTO dispute settlement activities involve not only the parties to the dispute and third parties, but the Dispute Settlement Body, the Director-General, the Secretariat, the Panels, the Appellate Body. In addition, depending on the case, experts, arbitrators, institutions and related international organizations may be convened.

The Dispute Settlement Body is formed by the General Council, whose function is to resolve conflicts between members. As seen in the third chapter, Article IV of the Agreement Establishing the WTO states that the General Council must perform the functions of the DSBs, which are therefore directly subordinated to the General Council in the WTO hierarchy.

The DSB is composed of representatives of WTO members, usually diplomatic delegation or ministry officials, which gives the body a political character, since the interests of the countries it represents are defended. Under Article 23, DSBs have exclusive competence to rule on the adjudication of disputes involving the interpretation and application of WTO treaties, and appeals to other jurisdictional bodies are prohibited. Therefore, its jurisdiction is

mandatory for all WTO members.

As can be seen, the DSB is responsible for the application of the Dispute Settlement Understanding and for the administration of all dispute settlement systems. Article 2(1) states that the DSBs have the following functions

establish special groups, abide by reports of the special groups and the Appellate Body, supervise the implementation of decisions and recommendations and authorise the suspension of concessions and other obligations determined by the agreements covered by the agreements.

Approval or rejection of Panel and Appellate Body reports is made by the negative consensus rule (Art. 2, §4), which means that the report will only not be approved if all members so decide. That is, the DSB will be considered to have decided by consensus when no Member present at the DSB meeting at which the decision was adopted formally opposes it. In this way, the system works with the slightest possibility of blocking, since it is enough for a member to ask for the adoption of the decision to prevent its rejection, which gives automaticity to the DSB's decisions.

The Chair of the DSB is an ambassador chosen from among the contracting parties to the WTO, and the Director-General is responsible for convening meetings of the body and appointing panelists to the case, in consultation with the parties. Thus, the Director-General "acting ex officio, may offer his good offices, conciliation or mediation to assist Members in resolving a dispute. (Art. 5, §6). As can be seen, the thickening of the WTO's legal framework does not remove its diplomatic function, as the parties are given the alternative of resorting to good offices, conciliation and mediation with the participation of the Director-General. Finally, the Director-General may appoint an arbitrator to determine a deadline for the implementation of DSB decisions if the parties are unable to reach a consensus on them, or appoint an arbitrator to examine the proposal to suspend obligations in the event of non-

compliance with measures.

The WTO Secretariat has an organisational administrative burden, the functions of which are to assist members in the functioning of the body, to provide complementary advice and legal assistance to member countries, and additionally to developing countries (art. 27, §2), and to assist the parties in the composition of the panels. In fact, administrative support allows the Secretariat's influence throughout the process to be significant.

If the consultations held by the Director-General do not lead to a satisfactory solution, the complaining country (i.e. the interested party) will not be able to reach a satisfactory solution, can request the establishment of a Panel (or Special Group) from the DSBs (Art. 6, §1), which will only reject it if there is a negative consensus among the members – unlike the GATT, in which the contracting parties should unanimously approve the establishment of a panel. It is up to the party to clearly identify the measures of the controversy, as well as the form in which the consultation procedure took place and the legal basis regarding the complaint (art. 6, §2).

Thus, in order to initiate the dispute settlement procedure in a panel, there must be a violation of the obligations contained in the agreements covered, where the applicant claims that a certain advantage resulting from the WTO agreements is annulled or compromised, or that the achievement of the objectives of the commitments does not occur due to the failure of the other member to comply with its obligations. In this case, it is sufficient for the applicant to prove that it does not comply with any provision of the Treaties.

The Panels are considered to be a semi-judicial body, whose function is to adjudicate disputes between members in the first instance, reviewing factual and legal aspects of the case and conducting an objective assessment of the facts. They are not permanent, and a panel must be set up for each case. Their main objective is to accurately verify the conformity of the measures adopted with the agreements covered, considering the interests of the parties

involved and the search for a mutually satisfactory solution through consultations (art. 11).

Articles 11 and 19 delimit the functions of the Panel, namely: to examine the factual and legal aspects of the case and request the parties to submit information whenever necessary; to report to the DSBs on the basis of the complainant's allegations and the compatibility of the measures; and if the complaints are well-founded and one of the WTO Members has failed to comply with any of its obligations, a recommendation is made which the complainant must comply with.

Panels are normally composed of three members, or, exceptionally, five members chosen according to indicative lists selected by the WTO secretariat, whose members have recognized competence in the area of trade policy, and must act with autonomy, independence and impartiality (art. 8, § 4). If the parties fail to agree on the nominees, the Director-General will make the nomination. Finally, art. 8, §3 indicates that nationals of countries involved in the controversy can only act if there is an agreement between the parties.

In general, the deadline for the establishment of a Panel is 45 days, while the deadline for completion (i.e. completion of the final report) is around six months, in order to make the procedure more effective. However, in cases of urgency, "including those dealing with perishable goods, the special group should seek to disclose its report to the parties to the dispute within three months" (art. 12, §8).

It should be noted that "the procedures of the special group should be sufficiently flexible to ensure the quality of its reports, without unduly delaying the work" (art. 12, §2), and that "in determining the calendar for its work, the special group should set sufficient time limits for the parties to the controversy to prepare their written arguments" (art. 12, §2).

In the first step of the Panel, the complainant, the complainant and interested third parties present their arguments. The affected countries then submit their replies in writing. Next, the

Panel should seek all the information that may assist in resolving the case, and may consult experts to analyze scientific or technical issues that may arise in a particular case (art. 13), preparing the report based on this information. The initial project is then proposed, in which the Panel sends the facts and arguments contained in the expository report to both parties. In the next step, the Panel submits a new interim report, including findings and conclusions, subject to a request for re-examination by the parties. Finally, the revised final report is sent to the parties and circulated to WTO members. If there is a decision that a violation of a WTO agreement has been committed or that an obligation under WTO provisions has not been fulfilled, it is recommended that such provisions be brought into conformity, suggesting how it should be done.

After disclosure of the final report, members and stakeholders have up to 60 days to review it. After this time, the DSB meeting that will or will not approve the report takes place and the negative consensus rule applies. Thus, the report can only be rejected through negative consensus – it is very difficult to revoke its decision. If not rejected, the report becomes a DSB resolution or recommendation.

However, both parties can appeal the Panel's decision through the Appellate Body, a permanent body of the DSB that represents the second and last instance of the WTO's jurisdictional step, being an innovation to the old GATT system that balances the automatic adoption of the form that was developed by the Panels. Its central function is to examine the legal aspects of the reports issued, i.e. to promote the analysis of questions of law or interpretations of law in questions arising from the panel reports, allowing for the correction of possible errors and ensuring the consistency of decisions. Therefore, "appeals should be limited to the points of law dealt with in the Special Panel report and to the legal interpretations formulated by it" (article 17, §6), and it is not possible to re-examine the existing evidence or the factual issues of the controversy.

Unlike the Panels, the Appellate Body is composed of seven members chosen by the DSB,

each with a term of four years, and may be renewed once for each of them (art. 17, §2). Members must represent the diversity of WTO members, being persons of recognized prestige, with legal expertise in international trade, law, and the subject matter of WTO agreements, who are not linked to any government, and "must not participate in the examination of any controversies that may give rise to direct or indirect conflicts of interest". (art. 17, §3).

Upon examination of the legal aspects and questions of law, the Appellate Body "may confirm, modify or revoke the conclusions and legal decisions of the special group" (art. 17, §13). But more importantly, as with the Panel, the Appellate Body may make recommendations to a particular member involved when a particular measure is inconsistent with an agreement that covers it, with the aim that the party make the measure compatible with the agreement, suggesting means to implement the recommendation – which should always be guided by the rights and obligations of the agreements covered, without extending or diminishing them (Art. 19, §1 and §2).

As a general rule, the procedure of the Appellate Body should not exceed 60 days, "from the date on which a party to the dispute formally notifies its decision to appeal until the date on which the Appellate Body distributes its report" (Art. 17, §5). When the Appellate Body finds that it cannot present the report within 60 days, it "shall inform the DSB in writing of the reasons for the delay, together with an estimate of the period within which it may conclude the report" (art. 17, §5), by exceeding the period of 90 days in any case.

Finally, the Appellate Body report will be adopted by the DSB and accepted without restriction by the litigating parties "unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days of its distribution to Members" (Art. 16, §14). This means that in the WTO structure, the Appellate Body is subordinate to the DSB (political body), as members may collectively reject a report or adopt an interpretation of the agreements that prevails over the jurisprudential understanding. However, it is extremely

difficult to achieve consensus, which reduces the extent of political control over legal resolution.

As can be seen, the dispute resolution procedure conducted in the Panels and the Appellate Body should be brief, with, when a case enters the jurisdictional stage,

the period between the date on which the special group is established by the DSB and the date on which the DSB reviews the adoption of the report of the special group or appellate body should, as a general rule, not exceed nine months when the special group report is not appealed or 12 months when an appeal is made. If the Special Panel or Appellate Body, on the basis of paragraph 9 of Article 12 or paragraph 5 of Article 17, decides to extend the deadline for submission of its reports, the additional deadline shall be added to the periods mentioned above (art. 20).

If there is a need for urgency, the examination should take even less time (art. 4, §9º and art. 12, § 8º).

After the phases of consultation and jurisdictional solution via Panels and Appellate Body, the third stage appears, that is, the supervision of the recommendations and decisions (art. 21), as well as the compensation and suspension of concessions (art. 22). At this stage, the resolution is applied, and it is essential that WTO members comply with the decisions arising from the reports to ensure the effectiveness of the mechanism, strengthening the dispute settlement system through the reliability of the DSB to settle disputes.

“At a DSB meeting held within 30 days of the date of adoption of the Special Group’s or Appellate Body’s report” (art. 21, §3), the procedures for implementing the recommendations are initiated. Thus, after the resolution that decides the case, the losing country must rectify itself quickly, ensuring the effective solution of the recommendations, by informing

its intentions regarding the implementation of DSB decisions and recommendations. If

immediate implementation of recommendations and decisions is not possible, the Member concerned should be given a reasonable period of time to do so (art. 21,§3º).

The reasonable period should be either the period proposed by the Member concerned, subject to approval by the DSB, or a period in which both parties to the dispute agree, or, finally, a period determined by arbitration, which should not exceed 15 months from the date of action of the report proposed by the Panel or the Appellate Body. However, "such period may be longer or shorter, depending on the particular circumstances" (art. 21, §3).

Thus, it is understood that the reasonable period for implementation of the recommendations and decisions of the reports is 15 months, unless the parties agree otherwise, "provided that the total period does not exceed 18 months, unless the parties to the dispute agree to consider the exceptional circumstances". (art. 21, §4).

However, when the application of recommendations and decisions is not possible or does not take place within a reasonable period of time, the dispute settlement system offers means for the Member to be compelled to temporarily adjust to compliance with the report in relation to the agreement covered, avoiding the aggravation of damages. Thus, the DSB allows the insertion of compensation or suspension of concessions (art. 22) until the measures incompatible with the covered agreement are suppressed.

Compensation is voluntary and, if granted, must be compatible with the agreements covered (art. 22, §1). If the application of the recommendations is not carried out, the member must, first, "promote negotiations with any of the parties that have resorted to the dispute settlement procedure, with a view to establishing mutually satisfactory compensation" (art. 22, §2). This is what happens, for example, when there is a tariff concession on the part of the member who has lost the judicial imbroglio.

On the other hand, the suspension of concessions or obligations arising from the agreements covered is an option if the compensations have failed, and may be requested within 20 days

after the date of expiry of the reasonable period that the parties have agreed to perform the satisfactory compensation (art. 22, §2). Thus, without a compensatory measure, the complaining party may seek the authorization of the DSB to impose limited trade sanctions, suspending the application of concessions or obligations of the other party.

Legally, the suspension of concessions is characterized as a sanction, since it is a coercive act characterized by

"limited interference in the protected sphere of interest of another State, through the temporary deprivation of legitimately established rights. The suspension of concessions shall not allow the offending member to fully exercise the rights conferred on it by the treaties.". (AMARAL JÚNIOR, 2008, p.113).

The sanction, therefore, is a coercive act that arises from the conduct of an individual, the object of which is the deprivation of a good, being authorized by a valid rule. It does not consist in the effective use of force, but in the possibility of using it if the recipient does not cooperate.

According to §4 of article 22, "the degree of suspension of concessions or other obligations authorized by the DSB should be equivalent to the degree of nullification or impairment". If the proportion of the suspension is not equivalent to the harm suffered by the aggrieved party, the latter may propose the initiation of an arbitration, and the arbitrators will determine the equivalence between suspension and harm. The arbitrator

should not examine the nature of the concessions or other obligations to be suspended, but should determine whether the degree of such suspension is equivalent to the degree of nullification or impairment. The arbitrator may also determine whether the proposal to suspend concessions or other obligations is authorised by the agreement (art. 22, §7º).

In turn, the parties are obliged to accept the finality of the arbitration award and are

prohibited from seeking a second arbitration. Finally, the arbitration award must be community-based to the DSB, which, if requested, will authorize “the suspension of concessions or other obligations when the request complies with the arbitrator’s decision, unless the DSB decides by consensus to reject the request” (Ibid.).

The suspension of concessions or obligations is of a temporary nature, effective only until such time as the measure incompatible with the agreement covered “has been removed, or until such time as the Member required to implement the recommendations and decisions provides a solution for the nullification or impairment of the benefits, or until such time as a mutually satisfactory solution is found”. (art. 22, §8).

It should be noted that the application of sanctions is the last resort to resolve the dispute; first, the elimination of incompatible measures should be sought, in which the Member adopts immediately, or within a reasonable period of time, the recommendations of the DSB. If this is not possible, attempts are made to negotiate compensation. Finally, as a last resort, there is the suspension of concessions or the fulfilment of obligations related to the agreements covered. In any case, it is up to the DSB s to monitor how the adopted resolutions are complied with, until the issue is resolved (art. 22, §8).

Finally, as can be seen, in addition to the Panels and Appeal Bodies, the dispute resolution system provides for arbitration, individually or in groups, to decide certain issues in the process. This is because arbitration may “facilitate the resolution of some disputes concerning issues clearly defined by both parties” (art. 25, §1). Unless otherwise provided, recourse to arbitration is subject to the consent of the parties, who will agree on the procedure to be followed (art. 25, §2).

The DSB understands that arbitrators may be used as an alternative means of dispute resolution in two specific situations. First, as noted above, Article 21, §3 provides that, after the DSB has adopted the panel or Appellate Body report, arbitration may be requested to

determine a prudential time limit for a member involved in a dispute to implement the recommendations defined by the Special Group (Article 21, §3). Thus, it is a hypothesis that only occurs if there is no agreement on the deadline proposed by the country to which the recommendations are addressed.

Second, art. 22, §6 narrates the arbitrators may be provoked when the losing party is obliged to apply the DSB 's resolutions and recommendations, and wishes to challenge the level or nature of the suspension of proposed obligations (art. 22, §6). Thus, there is the possibility of arbitration in the event of an objection to the amount of the proposed suspensions or where there is an offence against the provisions relating to compensation or suspension of concessions[4].

Therefore, based on these considerations, it can be noted that the WTO has adopted rules of conduct for the dispute settlement system, establishing rules, powers, deadlines and procedures to ensure, above all, the impartiality and confidentiality of disputes, reiterating that such rules are applied to all contracting members of the Organization who, consequently, participate in the activities of the Dispute Settlement Body.

Below, we will show the understanding of the dispute resolution mechanism through some determinations of the Panels and the Appellate Body, based on disputes in which Brazil participated and which marked the jurisprudence of the Dispute Settlement Body. Some cases are emblematic for the development of the legitimacy of the multilateral trade system, but also for the defense of Brazilian commercial interests in the international economic context, considering its legal component of dispute resolution.

3. The European Communities and Chicken Cuts case (EC-Chicken Cuts)[5]

The case was initiated in 2003, with Brazil and Thailand as the applicants, and the European Communities as the defendants. The dispute occurred because of the change in the tariff classification of salted chicken imported by the European block, which caused the Brazilian

chicken to pay a higher import tariff than previously applied.

In 2002, the EC took measures to reclassify the tariffs on chicken pieces impregnated with salt (1 to 3%) and frozen from position 02.10 (salted chicken) to position 02.07 (frozen chicken), which affected Brazilian exports, and subject the product to the application of a special safeguard. This is because, according to the EC, to fall under position 02.10, chicken meat should be impregnated with salt to ensure its long-term conservation.

Brazil stated that the notion of long-term conservation would not be suggested in the term "salted", arguing that the tariff reclassification of chicken meat resulted in less favourable treatment for the product than that granted by the EC on its list of commitments. In doing so, the EC would be in breach of GATT Article II, §1, which describes that "each Contracting Party shall grant to the other Contracting Parties, in trade matters, treatment no less favourable than that provided for", resulting in the imposition of import duty higher than that contained in the EU's schedule before the WTO.

The Panel report found that the tariff reclassification carried out by the EC violated that Article. That decision, confirmed by the Appellate Body, noted that the EC reclassification measure imposed duties in excess of the undertaking given, as the tariffs for frozen chicken were higher than for salted chicken. The arguments of the Appellate Body involved paragraphs 1, 2 and 3 of Article 31 of the Vienna Convention on the interpretation of the term "salted", in light of its ordinary meaning, object and purpose of the treaty, stating that such term did not condition the addition of salt to the preservation of the product, considering that the scope of the tariff commitment was not limited to salted products aimed at long-term preservation.

Thus, the EC's argument that the addition of salt was intended to preserve a long period to differentiate the product was not accepted. In relation to the analysis of its object and purpose, the Panel noted that the lack of clarity associated with the application of the long-

term preservation criterion in relation to position 02.10 would meet the idea of maintaining the security and predictability of tariff arrangements concluded in the WTO and GATT.

This decision, maintained by the Appellate Body, confirmed that cuts of chicken with added salt would be covered by position 02.10 of the EC's Schedule of Commitments, recommending that the DSBs request the EC to amend measures incompatible with GATT. The EC formally complied with the implementation of the recommendations, recognizing that the decision to change the customs classification was aimed at giving less favourable treatment to the product concerned than that set out in its tariff commitments.

As can be seen, according to the Appellate Body, the "object and purpose" method used to interpret the treaty should be adopted as the starting point for the analysis of the treaty as a whole, although art. 31, §1 of the Vienna Convention does not exclude the consideration of specific terms of the treaty in their entirety. Thus, the Appellate Body understood that the criterion of "long-term preservation", established by the EC, could lead to uncertainties regarding the concession contained in position 02.10 of the EC's list of commitments, which could achieve the object and purpose of security and predictability established in the WTO's Constitutive Agreement and GATT.

The Appellate Body considered the agendas of Brazil and Thailand, and the EC had to adopt a new regulation on the matter. In this case, the Panel and the Appellate Body developed a detailed analysis of the interpretation of the EC's Lists of Commitments, according to the customary rules of treaty interpretation. It is a relevant example of the use of the Vienna Convention on the Law of Treaties as an opportunity to assess its scope as an instrument for the interpretation of texts.

4. The US-cotton case (*US- Subsides on Upland Cotton*[6])

In 2003, Brazil requested consultations with the DSBs on subsidies provided by the United States for domestic production and exports of cotton in the period 1999-2002, which caused

enormous damage to Brazilian exports and illegally unbalanced the competitiveness of world agriculture. Thus, it was questioned the compatibility between agricultural measures of a developed country related to its commitments assumed in the WTO, in violation of articles 3, §3, 8, 9, §1 and 10 of the Agreement on Agriculture.

It was one of the WTO's longest cases and it exhausted all the procedures provided for: consultations, panels, appeals, implementation panels, appeals and retaliation panels. In the dispute, each country made its arguments based on econometric models, seeking to demonstrate the causal link between subsidies and the suppression of international prices, as well as the impact on production and exports.

Thus, Brazil questioned the U.S. agricultural programs, requesting the establishment of a Panel that contradicted the legality of subsidies offered to cotton producers in the country. According to the argument made by Brazil, the U.S. Farm Bill distorted the international cotton market because it lowered commodity prices by approximately 15%. This triggered the sale of U.S. products at lower prices, conquering significant slices of the market and causing losses mainly to economically weaker countries. In 2001, Brazilian losses were estimated at US$ 600 million, while subsidies caused a 12.6% drop in the price of the product between 1999 and 2002.

In order to prove this illegality, the Brazilian government presented data showing that the United States helped cotton producers, estimating a total value of $ 12.9 million in subsidies – value beyond the commitments allowed in the Uruguay Round ($ 8 billion).

Before questioning the illegality of subsidies, Brazil broke the obstacle of the "Peace Clause" of the Agreement on Agriculture, which prevented, during the years 1995 to 2003, any claim against subsidies in the agricultural area – provided that certain amounts and requirements are respected. An important discussion supported the nature of Article 13 of the Agreement on Agriculture, clarifying that its content would or would not be an affirmative defense,

granting the burden of proof to the party that evoked it (United States). The Panel determined that it would be up to the plaintiff (Brazil) to demonstrate that the measures adopted were being disregarded.

During the course of the Panel, both parties sought to demonstrate the causal link between the subsidies and the suppression of international prices. And, after decision of the Panel and the Appellate Body, the U.S. agricultural programs (Step 2, Marketing Loan and Counter-Cyclical Payments) were considered incompatible with the multilateral rules of the WTO, constituting subsidies that cause serious damage to Brazil through the containment of international prices and disproportionate increase in the participation of the United States in cotton exports. In all programs, it was proven the illegality not for its intrinsic characteristics, but for its effects, by causing serious damage. The Step 2 program was considered illegal, regardless of its effects, because it was granted in return for exports or consumption of cotton produced in the country.

In the Appellate Body, the determination of the Panel was maintained, highlighting the presence of export subsidies. However, the Appellate Body considered that the Panel's analysis of certain quantitative evidence did not meet the requirements of Article 11 that the Panel should make an objective assessment of the facts. With this, the Appellate Body completed the analysis and concluded that the structure, objective and operation showed that the United States acted inconsistently with the Agreement on Agriculture, and that the Americans practiced significant price restraint in the world cotton market.

In this case, in the recommendations, the Appellate Body emphasized the neutrality of the WTO dispute settlement system. According to the Appellate Body, where alternative means of achieving compliance are possible, the choice of such means belongs, in principle, to the member that must implement them. This choice will be among the possible means to implement the controversy, and the DSB will not be able to provide incentives or disincentives for a WTO member to adopt broader or narrower measures as part of its

implementation efforts.

The means of implementation of the ruling can be seen below. The United States has not complied with the Panel's determinations, and Brazil has appealed to adopt countermeasures or retaliation by suspending rights and obligations with respect to the defaulting member.

However, the authorization to adopt countermeasures, in addition to being subject to a proper arbitration procedure, must also be preceded by legal certainty that the noncompliance actually exists. Consequently, it became necessary to initiate an implementation panel (art. 21, §5) to obtain a new decision confirming the persistence of illegality and the condemnation of U.S. policies. To this end, during this process, Brazil followed the argumentative line of the original Panel, reaffirming the influence of the United States in the formation of international prices of cotton, as well as the high payment to producers in the country, which exported large quantities of subsidized cotton. Almost a year and a half later, Brazil again emerged the winner, and the Panel concluded that the initial measures adopted by the United States were insufficient and that they continued to violate WTO rules.

According to Andrade (2013, p.98), to achieve this result,

it was necessary to engage, with technical and juridical solidity, in a complex and full of nuances debate. The option adopted by Brazil was always to minimize the risks as much as possible and to try to refute, as broadly as possible, any argument presented by the United States, however impertinent it might seem, in order to give the judges – panel and Appellate Body – as many elements as possible so that they could arrive at their decisions with certainty. Although in less "difficult" cases, on subjects where the jurisprudence was already settled, such an approach could be less necessary, it was essential in the case of cotton, given the novelty and complexity involved.

Even so, at the end of the implementation, the United States continued to fail to comply with

the determinations, which paved the way for Brazil to seek authorization to adopt coercive measures of retaliation.

The adoption of retaliatory measures was not a goal in itself, but it would increase pressure on the United States, causing it to emerge from its inertia and make its policies compatible with WTO rules. According to the Brazilian evaluation, the most effective retaliation depended on the country being authorized to adopt countermeasures not only in the area of goods, but also in the area of intellectual property, configuring the cross-retaliation (that is, in an area different from that in which the conviction was given). This is because measures that would affect a key sector of the U.S. economy could create internal mobilization in the United States.

However, it was very difficult for Brazil to convince the arbitrators, technically and legally, when it came to the adequacy of the authorization of cross-retaliation, because the only precedents so far existing were related to disputes between Ecuador and the EC (DS27). With this, Brazil sought to go beyond existing precedents, exploiting to the maximum the margin of flexibility offered by the rules on countermeasures, so that the country worked to obtain the highest amount for retaliation, requesting an initial annual amount of US$ 1.16 billion. Seeking cross-retaliation, the country's legal thesis argued that it would be impractical to retaliate only by raising tariffs, and that there were serious circumstances that justified the adoption of countermeasures in relation to commitments contained in another agreement, other than the one in which the violation occurred.

With respect to the Brazilian request for cross-retaliation, the arbitration decided that, given the strongly distorted characteristics and the long duration of the US subsidies, the "circumstances were serious enough" to justify cross-retaliation. With this, Brazil had the right to retaliate in a crossed way, both in goods and in intellectual property, in an amount that reached US$ 829 million. From that moment on, the United States ceded and sent a delegation to negotiate with Brazil, and in 2010, a Framework Agreement was signed

between the two countries, where it was agreed that the Americans would pay the amount of US$ 147 million per year, until the adjustments of agricultural programs in relation to the Agreements and decisions of the WTO were made, or another mutually satisfactory solution was reached.

With this, it was proven that the structure of subsidies isolated North American producers from market signals, generating artificiality in excess production and exports. Immediately, the outcome of the dispute clarified aspects of agricultural agreements and unexplored subsidies hitherto, which strengthened the questioning of various agricultural subsidies in other cases, increasing visibility and contributing to undermine the legitimacy of the policies of agricultural subsidies from developed countries. Also, during the arbitration proceedings, the uniqueness of the case was made explicit, opening up the agricultural subsidy practices of developed countries, undermining possible arguments as to its legitimacy. Finally, the litigation generated jurisprudence, pointing the way forward for future cases with similar characteristics.

5. The case Brazil – Measures affecting Imports of Retreaded Tyres*[7]*

Since the early 1990s, Brazil has banned the import of used and refurbished tires – with the exception of the opening to import of remolded tires from Mercosur. Thus, the case, initiated in 2005, refers to the EC demand against Brazil due to the Brazilian prohibition on imports of retreaded tires since 2000, considered restrictive and protectionist by the EC, not finding support in the multilateral rules of the WTO and adversely affecting European exports.

For the EC, reformed tires would be distinct from used tires because they could be equated with new tires, and the change is a practice beneficial to the environment. The EC also objected to the exception granted to Mercosur member states (especially Uruguay), which were able to export retreaded tires to the Brazilian market. Thus, the EC claimed that the Brazilian measures violated the principle of the most-favoured-nation clause (art. I, §1 of

GATT), as well as the principle of national treatment, in its art. 3, §º, which states that any product from a Party's territory entering the territory of another Party will not enjoy "less favorable treatment than that granted to similar products of national origin, with respect to laws, regulations and requirements. Finally, it was also claimed that there was a discriminatory application of quantitative restriction, because

No prohibition or restriction shall be applied by a Contracting Party to the importation of a product originating in the territory of another Contracting Party or to the exportation of a product intended for the territory of another Contracting Party unless similar prohibitions or restrictions are applied to the importation of the like product originating in all other countries or to the exportation of the like product intended for all other countries (GATT Article XIII, §1).

Brazil argued that importing refurbished tires would speed up waste generation in the importing country, since the tire could not be refurbished again, which would pose a serious threat to the environment and public health, since the accumulation of waste would represent the reproduction of mosquitoes that cause dengue fever. The central argument of the defense presented by Brazil was simple: when compared to new tires, the refurbished tires are products with a shorter life cycle, generated from the carcasses of used tires, and the accumulation, transportation and disposal of waste tires represent serious risks to public health and the environment of the country. As a result, the import of refurbished tires introduced considerable quantities of vulcanized rubber waste, the handling of which is complex and costly.

Therefore, Brazil was based on the exceptions of art. XX, which reproduces, in its caput, that the provisions of the GATT Agreement will not be interpreted, as long as they are justified, if they prevent the application of the measures "necessary for the protection of health and life of people and animals and the preservation of plants" (Art. XX, b, of GATT), as well as for the prevention of deceptive practices. Brazil had to go through rigorous tests established by the jurisprudence of the WTO Appellate Body when invoking the exception of art. XX. In this way,

it was sought to highlight the importance of the relationship between trade and the protection of the environment and public health.

Furthermore, Brazil claimed that the exception granted to Mercosur would be supported by Art. XXIV of GATT, which establishes the exception to the most favored nation clause for regional trade agreements, which would not violate this principle since it constitutes a Customs Union. Therefore, the opening to Mercosur did not represent unjustifiable or arbitrary discrimination, since the prohibition was originally established as erga omnes, and only after the decision of the regional dispute settlement mechanism was the opening to Mercosur.

In examining the case, both the Panel and the Appellate Body recognized the legitimacy of Brazil's claims regarding environmental and public health aspects, affirming that the prohibition of imports of refurbished tires would be a necessary measure for the protection of the environment and public health, being justifiable as necessary under Article XX, b of GATT. Thus, the WTO recognized the country's right to adopt measures restricting imports of products harmful to the environment and public health.

The Panel considered and assessed the contribution of the ban to its objectives contrary to trade restrictions, considering the importance of interests and values. For the Appellate Body, the Panel correctly determined that none of the less restrictive alternatives suggested by the EC constituted reasonably available alternatives to the ban.

As for the caption sentence of Art. XX, the Appellate Body understood that, in the way it had been applied by Brazil, the prohibition of imports of retreaded tires was an arbitrary and unjustifiable discrimination and restrictive of application of the exception. This is because the Brazilian prohibition excluded Brazilian importers who obtained injunctions with the Judiciary, as well as imports from Mercosur partners. Thus, for the Appellate Body, the evaluation of a discrimination must be made considering the objectives of the measure, determining that the

exception of Mercosul, as well as imports, via injunctions, caused prohibitions applied, constituting arbitrary and unjustified discrimination, being incompatible with art. XI, §1 of GATT and would not be excepted by art. XX of GATT.

As a result, the dispute allowed Brazil to maintain the ban on imports of refurbished tires for any exporting member, provided that for all WTO members, eliminating the discriminatory treatment granted to Mercosur, as provided in Article XX of the GATT. Otherwise, it should liberalize the import of retreaded tires for all WTO members.

In 2008, Brazil informed the WTO that it intended to comply with DSBs' recommendations, but that due to the complexity of the matter, it would need a reasonable period of time to correct the implementation of the ban on imports of retreaded tires. As no agreement was reached between the parties, the EC initiated arbitration. While Brazil requested a period of 21 months to implement the outcome of the dispute, the EC, in turn, argued that it would be impossible for Brazil to comply with the WTO ruling through legal action, arguing that it should repeal the measures prohibiting the import of remolded tyres. In the end, the arbitrator determined that Brazil would have 12 months to implement the WTO ruling.

In order to comply with the recommendations of the Panel and the Appellate Body, an Argutation of Noncompliance with the Fundamental Precept (ADPF) No. 101 was filed with the Federal Supreme Court, seeking to eliminate the possibility of granting injunctions to the import of retreaded tires and to cancel the injunctions already granted. In 2009, the STF judged the ADPF favorable, issuing the SECEX ordinance No. 24, eliminating the exception for Mercosur, so that Brazil reported to the Dispute Settlement Body the full compliance with the recommendations. Thus, by complying domestically with WTO recommendations, Brazil further strengthened the legitimacy of the multilateral trade system. Still, the dispute over reformed tires represented an important multilateral victory for the country, demonstrating that tires represent a central concern for health authorities in Brazil, proving that their trade is one of the main causes of the spread of diseases in the world.

We can also emphasize that Brazil's victory contributed to the establishment of a dividing line between trade in new products and products used within the scope of multilateral rules, in addition to becoming a successful case in protecting the environment and public health, so that public policies can consider the WTO's national interests simultaneously with the fact that there is respect for multilateral trade rules.

Conclusions

With the establishment and consolidation of the WTO, International Economic Law has become even more legal, with a more comprehensive and complex legal apparatus, allowing conflicts to be resolved efficiently and technically, giving less room for political interpretations. Added to this is the fact that the mixture of a judicial system of Roman law with the characteristics of the commom law regime contributes to the international acceptance of the system.

The central objective of the WTO is the expansion of international trade with greater legal certainty, in addition to lower customs tariffs, as well as non-tariff barriers. Through legal certainty, the effectiveness of the established rules is guaranteed, which, in the case of the WTO, are monitored by the Dispute Settlement Body, made up of representatives of WTO members and subordinated to the General Council, being a quasi-judicial body with competence to establish Panels, adopt their reports, as well as the Appellate Body, supervising the implementation of decisions and recommendations not through punishment, but through strengthening compliance with multilateral trade rules and the adoption of practices compatible with the agreements.

With the establishment of the Appellate Body, which functions as a second instance, the legal and legal foundations of the Panel's report are verified, which further reinforces the rule-oriented system. With the rule of negative consensus, it is almost impossible for a member to prevent the establishment of a panel or the adoption of panel or appellate body decisions.

The DSB was created as a technical rather than a political body, treating its decisions with an important degree of legal technicality, following the principles of Public International Law, so that its decisions are autonomous in deciding whether or not to apply a treaty outside the system.

With the thickening of the juridicity of the dispute settlement mechanism, there was a need for interpretation of the Agreements. In the case of the WTO, the Appellate Body interprets its agreements based on the Vienna Convention, which provides a guide not only for the Panels, but also for those members who seek to conduct themselves within the limits of their obligations. In this way, the WTO is increasingly becoming a system of rules, the meaning of which is defined through the interpretation of jurisdictional bodies, which increases the legitimacy and political acceptance of DSBs' decisions, promoting the clear strengthening of the functions assigned to it since the creation of the WTO.

But more importantly, as verified by the analysis of the cases in which Brazil acted in the WTO DSBs, the new system gained legitimacy as a whole by making effective the condemnation of economically weaker countries against stronger countries, reducing the use of power oriented by losing countries. Thus, contracting parties prefer to bear the losses of compliance with a DSB decision rather than undermine the system's degree of legal reliability, since if

the most powerful countries use their force to comply with a given decision or counterattack retaliation allowed to a less strong country by the DSB, there would be a loss of legitimacy of the system and, in the medium or long term, its collapse (VARELLA AND SILVA, 2006, p.34).

It can be seen that DSBs allow economically weaker countries to put pressure on the strongest to comply with international law. This has led to a significant increase in the participation of developing countries in DSB dispute settlement processes.

As main examples, we can cite the case of cotton subsidies, in which the United States

refused to identify the list of beneficiaries with subsidies, while Brazil, when obtaining evidence and submitting it to the DSB, proved the irregular measure in relation to the agricultural agreement, so that the body gave victory to Brazil, condemning the Americans to eliminate the undue subsidies.

Obviously, after these final considerations, it is necessary to understand that the system of forces is still predominant in the formulation of legal norms that guide the WTO dispute settlement system, but the system of norms is gaining increasing relevance.

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[2] With procedural formalism, the need for precise time limits, justified decisions and the preparation of reports by Panels was emphasized. This is because, historically, GATT was known for its procedural delay without time limits (such as consultations, the request for the establishment of the panel and the judgment), the lack of rigor and clarity in decisions, the rule of positive consensus and its influence on doubts about the adoption of the report prepared by the panel and, finally, due to the slowness of adoption of the proposed recommendations – which were often partial or total decompression (TREBILCOCK E HOWSE, 2001, p. 55-56). Even so, despite the flaws, the GATT system proved capable of ensuring a balance between the rights and obligations of the parties, since most of the complaints were accepted – even with the decline in compliance with decisions in the 1980s..

[3] developing countries, on the other hand, have differentiated and special treatment in DSB procedures, with a longer period of time in the various stages of the procedure in relation to developed countries, or including participation in the Panels by a member of origin from the

developing country.

[4] Brazil has already been involved in a case in which arbitration under art. 22§6 occurred. In the case of the Export Financing Program for Civil Aircraft, filed by Canada against Brazil (WT/DS 46), the Panel determined that the measures adopted by Brazil were incompatible with the Subsidies Agreement. Thus, the country made modifications to its measures – which, however, were not considered sufficient by Canada. Subsequently, Canada also did not accept the compensation offered and asked the DSB to retaliate against Brazil. Finally, the arbitration was established at the request of Brazil in order to determine the amount of retaliation applicable..

[5]Available at: <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds269_e.htm_e/dispu_e/cases_e/ds269_e.htm>. Accessed on: 10 May 2019.

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