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Abstract
The study discusses the role of the World Trade Organization (WTO) in dispute resolution and examines issues influencing its effectiveness. This paper investigates the trade disputes between the US and the European Union, focusing on the agricultural sector controversies over crops, beef, and bananas in addition to the conflict over the US government decision to impose tariffs on imported low-cost steel. The final sections of the paper highlight some of the structural factors that create limitation in the role of the WTO in resolution of disputes and provide analyses with the potential of enhancing the capabilities of the WTO in resolving trade disputes.
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Introduction

The transatlantic trade of goods and services between the US and the European Union (EU) is the largest in the world, 45% of global services and 38% of goods, which amounts to more than $750 billion (Hocking and McGuire, 2002). Most EU and US firms trade amicably across borders. However, in this era of economic integration pacts, the complexity of international trade has gone beyond the traditional transfer of capital, goods, and services. Special issues – the environment, consumer safety and health, supply networks, and maintaining the competitive advantage of domestic firms – have created complex factors influencing domestic policies, trade barriers, and the definition of protectionism, tax breaks, subsidies, and standards of health and safety.

In the US, trade policies are mostly drawn based upon the private sector's interests, with the influence of strong lobbying groups (Jacek, 2000). In the EU, the European Commission (EC) is the deciding entity on policy making, with lobbying and special interest groups becoming more active (Hocking and McGuire, 2002). With the growing power of lobbying and special interest groups, international economic transactions are increasingly intertwined with political and domestic issues beyond the traditional concern for producer-protectionist measures.

In this paper, the role of the World Trade Organization in dispute resolution is analyzed in reference to two important areas of trade disputes between the US and the EU – agriculture and steel. These cases exemplify the effectiveness of the WTO in settling various

trade disputes. Furthermore, the paper highlights structural factors that limit the capabilities of the WTO in resolving disputes.

World Trade Organization

The General Agreement on Tariffs and Trade (GATT), the predecessor to the WTO, dealt with the international trade disputes through a negotiation-based system and the decisions rendered by the dispute resolution panel of GATT had to be adopted by all parties involved (Brewster, 2006). Such decisions could be negotiated by the disputing bodies. However, any party involved in a dispute could block the decision of the panel or prolong the implementation of the decisions rendered by the WTO (Brewster, 2006).

During the Uruguay Round of trade negotiation between 1986 and 1993, an agreement was reached to establish the WTO with the ability to rule if a country's trade policies were discriminatory to foreign companies. The WTO has a systematic rule-based approach to resolution of disputes. The decisions rendered by the WTO cannot be blocked by the parties involved and the losing party is mandated to abide by the rulings of the WTO.

The WTO consists of the Dispute Settlement Understanding (DSU), which provides the rules and regulations for trade disputes, the Disputing Settlement Body (DSB) with the power to establish a panel for the review of the disputes and to oversee reports, rulings, and their implementation, a standing Appellate Body and procedures to monitor the implementation of the rulings and to oversee the amount of compensation and retaliation.

The DSU regulates the DSB's activities. The DSB starts negotiations for a settlement among the disputing parties with a mandatory consultation. If the disputing parties cannot agree within a certain period of time, the complainant party can ask the DSB for the establishment of a panel to review the case. The panel's decisions, based upon fact-finding and the policies of the WTO, are then provided in a report within 6 months. If neither of the parties agrees with the findings of the panel, they can then appeal the decision to the Appellate Body. The task of the Appellate Body is to review and interpret the panel's findings based on the legal issues. The panel's decisions can be upheld, reversed, or modified by the Appellate Body. With the Appellate Body's decision, the losing party has 30 days to comply or ask for a ''reasonable period of time,'' preferably within 15 months, to comply.

In the case of non-compliance, the complainant can ask the DSB for negotiation over compensation. If the defendant disputes the implementation of the compensation, the measures will be further reviewed by the DSB and retaliatory actions can be authorized, usually in the form of punitive tariffs.

In the following sections, three cases of trade disputes between the US and the EU that were brought to the WTO are examined to demonstrate the extent of effectiveness and the capabilities of the WTO in settling trade disputes.

Agriculture Industry

Trade barriers on agricultural products are among the strictest policies enforced by governments. The issues of food safety and related trade policies are the sources of important disputes that have challenged the WTO. The past decade has seen major trade disputes between the US and the EU on agricultural products. Hormone-raised cattle, genetically engineered crops, and the banana disputes have caused great controversy.

Hormone-treated beef dispute

Hormone-raised cattle compose more than 90% of beef produced in the US and Canada (Isaac, Banerji, and Woolcock, 2000). The history of the dispute between the US and the EU on hormone-treated beef started in 1981 when the EC banned the meat of livestock raised with growth hormones in their feed due to alleged potential health issues for prepubescent children (Wuger, 2002). As a result, in 1987, the US asked GATT for the establishment of a scientific group to investigate the EC ban. The EC rejected this request, and in 1988 it banned the use of all hormones in food products with the exception of three natural hormones under specific conditions.

However, due to the threat of retaliation by the US, the EC postponed the implementation of this decision for a year. After the EC ban went into effect in 1989, the US retaliated by putting a 100% tariff on eight agricultural products from the EU (Wuger, 2002). In 1996, the US terminated its retaliation due to the request by the EC and asked for a panel to address the ban by the EC. In 1997, the panel ruled against the EC for the breach of the Sanitary and Phytosanitary Standards (SPS) Agreement. Article 5 (7) of the SPS Agreement stipulates that scientific proof must guide the standards of food safety and that precautionary measures can be used only temporarily to allow for the scientific information to be gathered.

The follow-up appeal by the EC resulted in some latitude by the Appellate Body. It allowed the EU to have domestic health and safety protection standards more stringent than the international measures; however, the burden of the scientific justification was put on the EC. In response to the WTO ruling, the EC posited that the scientific research in this area was not sufficient to cover the future and long-term risk of using hormones; therefore, beef produced using hormones could pose unforeseen threats to the public health. The follow-up review by the WTO sided with the US and Canada and ruled that the EC did not provide any scientific evidence contrary to the current research and that its expectations for health standards went beyond the acceptable international requirements.

Despite this ruling, the EC kept the ban on hormone-treated beef and opted for a retaliatory act. The US estimated the beef export to the EU to be valued at $116.8 million annually and Canada's estimate was $8.00 million (Kerr and Hobbs, 2002). As a result, the US and Canada put a 100% tariff on imported EU products such as truffles, cheese, and bottled water. The continuation of the dispute and the decision of the US and Canada to keep the suspension have resulted in formation of another panel to review the matter (WTO, 2006, 2008).

Genetically modified crop dispute

Another source of trade controversy between the EU and the US is the case of genetically modified (GM) crops such as corn, soybeans, and cotton. GM crops provide a genetic insecticide that eliminates the use of extensive chemicals to eradicate pests. The GM crops were to be used for animal feed only since the environmental impact and the potential risks to humans and other animals and crops needed further research. But GM corn found its way in taco products across the globe (Hsin, 2002). In addition, Canadian government research on GM wheat and rapeseed and the potential of dispersion of pollens to wider areas raised the alarm about the introduction of foreign genes into the ecosystem (Hsin, 2002).

In 1997, the EC approved the import of GM soybeans and allowed cultivation of GM corn. However, the outbreak of mad cow disease and the public furor over the failure of the British government to regulate cattle feed resulted in the ban of the import and cultivation of GM crops by the EC (Hsin, 2002). According to the US government, this decision cost the US$600 million in corn exports to the EU (Hsin, 2002).

In 2000, the US and Canada agreed to the EC's demand to label their GM products. However, the EC used the same argument in banning hormone-treated beef, ''precautionary principle,'' to also reject GM crops. Even though the ''precautionary principle'' can be used only temporarily until the gap in scientific information is filled, this principle has been used as a means to permanently ban the unwanted products from entering the EU. Furthermore, the EC, under pressure from environmental and consumer groups, used the GATT's labeling policy and declared the GM agricultural products as ''novel products.'' As a result, US agricultural products that did not specify ''genetically modified'' on their labels were banned from entering the EU.

Moreover, in March 2003, the European agricultural ministers approved a strict food labeling policy that contained labeling of foods with even less than 1% of GM ingredients. The US contended that this could be used as a tool for differentiation among suppliers and gaining competitive advantage over the GM crop-producing farmers.

Similar to the hormone-treated beef case, consumer advocacy and environmental groups argued that the interests of the large corporations were the driving force behind the GM crop technologies. As an example, US-based Monsanto Corporation, which has control over gene modification technologies, tried to acquire a patent on a technology that would prevent the seeds of GM crops from being fertile. The outcry over this technology put the corporation at odds with its claim that the GM crops were the answer to solving the problem of hunger in poor countries and provided ample ammunition for the anti-GM crop advocacy groups.

The special interest groups opposed to the GM crops argue that the world produces enough food to combat world hunger, but logistics, pricing, and low productivity of land in poor countries are major underlying factors causing world hunger. Hence, the answer to world hunger does not lie in the genetic modification of crops, but in improved distribution and irrigation systems, ways to increase the productivity of the land, and better pricing strategies. Based upon the request by the US and Canada, a panel was established in 2004. However, the panel's final report has been further delayed (WTO, 2006, 2008).

Banana dispute

The banana dispute had its origin in the Treaty of Rome, which allowed Germany an annual quota for bananas based on the imports for 1956. However,

the old colonies and the current overseas territories of the EU in the Caribbean, Africa, and the Pacific could not compete with the Latin American banana producers as far as efficiency, price, and quality. In 1975, in the Lomé Convention, the Caribbean, African, and Pacific countries were given preferential treatment by the EU and measures were taken to assist them in improving their operations and marketing activities (McMahon, 1998).

Despite the preferential treatment and joint assistance given to these countries, their banana exports could still not compete against the Latin American countries. Over the years, the discussion regarding uniformity of banana tariff and quotas continued, and in 1993 the EC affirmed the traditional favorable status of the Caribbean, African, and Pacific countries and set a quota for the Latin American banana exporters.

The 1993 rules cut in half the EU market share of the major US banana-exporting company, Chiquita (formerly United Fruit). Over a period of 8 years, the Chiquita Company contested the preferential treatment of companies in the old and current territories of Britain, Spain, and France. Ultimately, the US, Mexico, Honduras, Guatemala, and Ecuador took their complaint to the WTO and argued that while the Lomé rules allowed for preferential treatment of the Caribbean, African, and Pacific countries at a certain level of banana export, the EU had not only raised the level of imports from these countries, but had also assisted in enhancing their marketing, production, and other related activities, which could be considered forms of subsidies. Furthermore, they contended that the EU had included countries not belonging to the traditional favorable status countries, such as Colombia, Costa Rica, and Venezuela (McMahon, 1998).

Britain, Spain, and France supported the restrictive quotas on bananas, but Belgium and Denmark allowed imports from Latin America despite the tariff, and Germany kept a free market (Stein, 2001). However, since production efficiency and price competitiveness in the preferred territories were not good, the price of their bananas was much higher than the price of the bananas produced by companies located in Latin America (Stein, 2001).

In pursuing the battle with the EU, the WTO ruled in favor of the US government and the Latin American complainants, but the EU refused to change its restrictive and preferential quota system. As a result, sanctions against the EU ensued, including the ban of products such as coffee makers and bath oils (Stein, 2001). In the summer of 2001, in response to retaliatory actions against the EU, the restrictive and preferential quotas were abolished and a system was established very similar to that prior to the quotas. According to this agreement, the favored countries' share of the banana export to the EU would decrease by 100,000 tons and the US and Latin American companies would have a greater access to the EU market (Ierley, 2002). In addition, the banana market is to be governed by a general tariff system.

The outcome of the role of the WTO in resolving the banana dispute was to place an important barrier to the EU's preferential treatment of particular countries. A goal of the Treaty of Rome has been the inclusion of developing countries into international trade and the improvement of their economies. However, 30 years of preferential treatment of the banana countries of the Caribbean, African, and Pacific have not helped in enhancing their trade competitiveness. The WTO rulings in the banana case recognized this dilemma and recommended inter-regional trade agreements such as the one among the Caribbean nations.

Steel dispute

In 2001, the American Iron and Steel Institute, which is composed of 36 North American steel companies, complained to the US International Trade Commission (ITC) about low-cost imported steel and the dumping of such steel in the US market, which had reduced the market share for the domestic companies and put their survival in jeopardy. According to statistics provided by steel companies, 46,000 jobs had been lost in the steel industry in a span of 5 years and more than 300,000 would be lost due to low-cost imported steel (Martinez, 2002). Subsidies in the steel industry, as in the agricultural sector, are highly prevalent across different countries. According to GATT, three forms of subsidized assistance are allowed: research and development, technologies to meet the new environmental standards, and social assistance, such as retirees' health care cost (Cyert and Fruehan, 1996). The US steel companies had a difficult time to compete against the foreign steel due to the subsidies provided to these companies by their governments and also dumping of steel by some foreign companies, such as South Koreans, Taiwanese, and Canadians (Jesdanun, 1999; Levin, 1999).

In addition, the inefficiency of small steel mills and the huge cost of pension and health care of retired unionized steel employees were added factors to the bankruptcy and the financial

difficulty of the US steel industry (Boselovic, 2001). As a result, the ITC recommended a tariff of 5–40% on 10 different categories of imported steel over a 4-year period. Russia's crude steel, Canada as a North American Free Trade Agreement (NAFTA) partner, and most developing countries due to insignificant amounts of exports, would be exempt from this tariff. However, steel imports from the EU, Norway, Switzerland, Japan, South Korea, Taiwan, Brazil, China, and New Zealand would be subjected to the tariff. In addition, the US steel companies asked the government to subsidize the huge deficit in the pension plan and health care cost of the retired employees (Boselovic, 2001).

In March 2002, the US government imposed tariffs, from 8 to 30%, on 14 categories of imported steel with the support of both Democrat and Republican representatives and senators from steel states in the Midwest and the state of Pennsylvania.

Meanwhile, a strong opposition to steel tariffs came from domestic industries such as automakers, auto parts, molding, construction, and other customers of steel, and states such as Michigan, home to the major auto manufacturing companies, and Louisiana, a major port of embarkation of goods. The steel-consuming industries argued that the US steel plants could supply only 70–75% of the domestic needs (Purchasing, 1999).

Hence, the tariff on steel would have a major negative impact on downstream manufactures. By closing the borders to foreign steel, with the subsequent shortage and higher prices of steel, the steel customers, with 8.3 million production workers (Purchasing, 1999), would have no choice but to relocate or lose their competitive pricing and sales. As a result, thousands of jobs in these sectors would be lost in order to protect approximately 200,000 jobs in the steel industry. In addition, the threat of retaliation by other countries, the costs of relocation to the steel-consuming companies, and the disruption of their production activities could cost the US economy billions of dollars.

Within 6 months of the imposed steel tariff, the price of steel increased by 6%. Furthermore, due to a shortage of steel, the spot market price was raised by 30% and the price for scrap steel, a main product for auto parts and smaller components for industrial machinery, was raised by 15–20%. In early 2003, the lobbying of auto companies and steel customers against the tariffs intensified. The Consuming Industries Trade Action Coalition (CITAC) heavily lobbied for the elimination of all steel tariffs. Michigan's Congressional Representative introduced a resolution for the ITC to review the consequences of the tariffs (Corbett, 2003). Meanwhile, the steel industry countered that the price focus of the auto companies was the major reason that steel companies were in such tight spot.

The pressure to eliminate the tariffs on imported steel continued through reports that 200,000 domestic jobs in 2002 were lost as direct result of imposing these tariffs (Phelps, 2003). In addition, the EU, Japan, and six other countries reacted by asking the WTO to arrange a consultation with the US regarding the steel tariffs. Meanwhile, the EC prepared a list of 316 US products with a value of $2 billion in case retaliation would be the final resort. The WTO spent 9 months investigating the complaint. In July 2003, the WTO ruled in favor of the complainants that the steel tariffs violated global trade agreements and that the revenues from these tariffs that went to the affected US steel companies constituted illegal trade practices since they were considered subsidies. The US position was that the safeguard accord of the Marrakech 1994 world trade pact allowed countries to take temporary measures to protect threatened domestic industries.

However, the burden of proof that such industries' survival is threatened is with the countries that impose protectionist measures. In the case of steel, the WTO ruled that the US failed to prove its case. Under pressure from the domestic steel customers, specifically the giant auto companies, and the threat of retaliation by the EU, the US government did not appeal the WTO ruling and introduced 178 exclusions to tariffs on the steel products. Even though this concession was a relief for the domestic steel users and welcomed by the EU, it was not enough for the EU to stop the threat of trade retaliatory procedures. Ultimately, in December 2003, the US government decided to repeal the steel tariffs.

Issues impeding the success of the WTO as a dispute resolution body

The WTO was created not only to reduce the period of time that it took for GATT to deal with trade disputes, but also to streamline the dispute settlement process. Under GATT, the losing party could block the panel's ruling; under the WTO this option is not available. However, the losing parties have found different tactics, such as creative interpretation of the WTO language, to delay or avoid adoption of the WTO's rulings.

In the following sections, this paper examines the issues and problems of the WTO that impede its success in effectively resolving trade disputes. These issues and problems are grouped into three categories that have varying degrees of complexity. These categories consist of technical issues, conceptual issues, and functional issues. The technical issues include problems that are related to the rules, procedures, and the body of the language of the WTO. These issues entail a lesser degree of complexity to address and alleviate. The issues in the second category are related to the conceptual foundation of the WTO – the economic and political power differentials among the member countries and the focus on supplier-related trade barriers. These issues create more complicated obstacles than the technical issues for effective operations of the WTO.

The third category, the functional issues of the WTO, is associated with the role of the WTO as a unique international agency that can issue mandates and interfere with the domestic laws of member countries. This category comprises the most complicated issues of the WTO.

Table 1 provides a list of the related issues under each proposed category.

Table 1 Categorization of the issues impeding the success of the WTO as a dispute resolution body

1. *Technical issues*:
   a. Rules, policies, and procedures:
      - Time-line
      - Summary reports
      - Secrecy
      - Disputing parties
      - Panel composition
      - Bilateral negotiations
      - Retaliatory acts
   b. Language:
      - SPS Agreement
      - TBS Agreement
      - Implementation of rulings
2. *Conceptual issues*:
   a. Inequality of power:
      - Developing countries
   b. Foundation:
      - Supplier-specific focus
3. *Functional issues:*
   a. International mandates:
      - International laws *vs* domestic laws
   b. Standardization of the mandates:
      - Differentiation *vs* harmonization

Technical issues

The technical issues impeding the success of the WTO in resolving trade disputes can be further categorized as indicated in Table 1. These categories include issues related to WTO's rules and procedures and the DSU or the body of the language of the WTO.

Rules, policies, and procedures. A concern with the WTO's conflict resolution process is the delay in rendering decisions. The time frame for the panel to issue its reports is within 6 months. If the panel misses this deadline, the second deadline is within 9 months. However, meeting this timeline has been an issue. Reviewing the timeline for 36 cases brought to the panel from 1995 to 1999 indicates that the panel has met the 6-month deadline for only six cases and the 9-month deadline for five cases (Stewart and Karpel, 2000). These delays on one part are due to the length of the summary reports, which according to the WTO policies are generated based upon the complaint of each party involved in a dispute. The hormone-treated beef dispute reports, one for the US and one for Canada, were each over 400 pages (Stewart and Karpel, 2000). Another reason for delay is requests of the disputing parties for more time to conduct research and prepare documents, as evident by the GM crop and the hormone-treated beef cases.

One more point of discord is the issue of secrecy and the lack of transparency in procedures, reports, and public dissemination of these reports by the WTO. According to the WTO rules, the disputing parties must be governmental agencies. The WTO's rejection of the efforts of the US and the EU to formalize the acceptance of unsolicited briefs by private entities has resulted in more contention (Hauser and Zimmermann, 2003). Hence, the WTO's refusal in involvement of all interested parties (e.g., environmental and consumer advocacy groups) and the tendency of the WTO to reject unsolicited reports from the third parties and its unresponsiveness to such reports have added to more controversy over the decisions rendered by the WTO (Wallach, 2000).

Another issue at the center of the controversy over the WTO procedures is that its rulings in providing remedies are in the form of bilateral negotiations since the WTO policies do not allow multilateral negotiations. Another concern is the lack of permanency in the composition of the panel. Reviewing the composition of the panel in 51 cases brought to the WTO indicates that only

three people served on four to five panels, seven people on three, and the rest did not serve on more than two panels (Stewart and Karpel, 2000). Hence, the absence of permanency in the panel composition, which results in the lack of in-depth experience and expertise to deal with complicated international and domestic trade laws, is an issue that needs to be addressed.

Another concern in resolving the disputes under the rules and procedures of the WTO is the standard of review for the panel and the Appellate Body. A controversy in this case is the appropriate approach by the WTO panel and the Appellate Body in reviewing a case. Should the panel and the Appellate Body defer and rely upon the facts provided by the disputing parties in assessing the situation or should they forge ahead with their own independent fact-finding and legal assessment of the compliance of the disputing members with the WTO rules and regulations (Oesch, 2003)?

Furthermore, a major contentious issue is the nature of retaliatory acts and specifically the ''carrousel retaliation'' policy. When the losing party opts not to abide by the rulings of the WTO, the winning party has the right to retaliate in the form of punitive tariffs. However, such retaliatory acts are against industries that have not been part of the dispute. For example, in the case of hormone-treated beef, the US and Canada retaliated against industries such as cheese, truffles, and bottled water. In addition, ''carrousel retaliation'' allows the winning party to change the list of ''sanctioned products'' periodically, which again retaliates against other industries that are not at the center of the dispute.

Language. Other issues that impede the success of the WTO as a dispute resolution body are related to language of the DSU that is open to interpretation. At the center of disputes over hormone-treated beef and GM crops was the interpretation of the standards of safety and health and the ''precautionary principles'' of the SPS Agreement in addition to the concept of the ''novel products'' of the Technical Barriers to Trade or Standards Codes (TBS) Agreement. Since the inception of GATT in 1947, international trade barriers in the form of tariffs have been lowered. However, more complex and sophisticated rules and regulations have replaced tariffs. Some of these new regulations are formalized internationally in the SPS and TBS articles undertaken in the Uruguay Round Agreement of 1994. They deal with international safety standards for food items.

The SPS Agreement ensures enhancement of food quality and safety internationally and allows governments to put trade protectionist measures in place to safeguard humans, animals, and plants. In addition, the SPS Agreement recognizes nation-specific food health and safety regulations in regard to food additives. Meanwhile, the TBS Agreement deals with food labeling, food composition, packaging, and quality requirements.

These safety and health standards have provided justification for many more trade barriers. Among these barriers in the agriculture industry are new safety and health regulations, environmental considerations, animal cruelty issues, and barriers based on ethical and moral grounds. These new forms of trade barriers can reduce international competition and create hurdles for foreign firms entering a country, specifically firms from developing countries. Complicating the matter further is the decision of GATT through the TBS Agreement to require labeling the health risks for ''novel products.'' Canada and the US claimed that the EU's demand for labeling information on GM agricultural products and hormone-treated beef did not fall under the category of ''novel products.'' They contended that the EU ban was not based on sufficient scientific evidence, but was a disguised trade barrier under the auspices of health standards and that the EC had created a higher level of health standards than the international ones without any scientific substantiation (Roberts, 1998).

The language used in the SPS and the TBS Agreements is not clear as to the definitions of risk, ''precautionary principles,'' and the definition of ''novel products.'' Under the SPS Agreement, there is no definition as to the acceptable level of safety risk. The vagueness of the language has allowed different interpretations of the SPS and TBS articles. The disputes over hormone-treated beef and GM crops are prime examples of different interpretations of the SPS and TBS provisions by different parties.

Another issue related to the DSU language is the implementation of the rulings of the WTO. The losing party's intention to comply is taken as a willingness to implement the rulings; however, the time frame and the actual implementation plan are open to interpretation and compliance of the losing and winning parties. The losing parties can define the time needed to implement the rulings

and not comply with the 15-month implementation period.

Conceptual issues

The conceptual underpinning of the WTO is another issue that has created hurdles in its capability to effectively address and resolve trade disputes. These conceptual issues include the inequality of power among the member countries and the constructional foundation of the WTO; namely, its supplier-specific focus.

Inequality of power. Another factor for measuring the degree of effectiveness of the WTO in conflict resolution is the weight of economic and political power of the complainants. The inequality of economic and political power of developing countries in imposing effective sanctions or retaliatory acts has been a sensitive and contentious issue. The lack of retaliatory power by developing countries as evident in the banana case between Ecuador and the EU brought about a proposal by the developing countries for an aggregate retaliation power that would allow the winning parties to collectively sanction products of the non-complying party. The WTO's rejection of this proposal has fueled anger among the developing countries and increased hostility toward the WTO.

Out of 140 members of the WTO, around two-thirds are developing countries; however, the disproportional economic power between these countries and the developed countries has created controversy over the fairness of the rules and procedures of the WTO when applied to the developing countries (Footer, 2001). The inequalities in the economic power of developing countries *vs* the developed countries and their lack of expertise in dealing with complex international laws and the ineffectual retaliatory power have added to the controversy.

Ierley (2002) conducted interviews with nine WTO diplomat members from developing countries. According to these members, the lack of economic power and retaliatory muscle do not favor conflict resolution if developing countries are the complainants against super powers. They consider the WTO's process a ''power-based system rather than a rule-based system'' (Ierley, 2002). An example is the resolution of the banana dispute with the EU that happened when the US joined forces with the Latin American co-complainants. Without the economic force of the US, the Latin American countries did not have the economic or the political clout to resolve this issue.

Foundation. The WTO's role as the trade dispute resolution body dealing with the issues of hormone-treated beef dispute and GM crops was a difficult one since precedent for such cases did not exist. GATT did not provide similar case background to allow established standards for the WTO to settle these disputes. As a result, the role of the WTO in resolving the disputes was clearly tested. A major hurdle in the ability of the WTO not only to resolve the trade disputes, but also to ensure the implementation of its rulings, is that the directives of the WTO and its predecessor, GATT, have been supply-driven processes. GATT dealt with tariff reduction policies; the WTO was established to look at other protectionist policies, such as non-priced-based barriers, but the focus of the removal of non-priced-based barriers has been on barriers created for protection of domestic producers. The WTO's interpretation of the EC sanction against hormone-treated beef from the US and Canada was as a traditional producer-protectionist act against the scientific results (Kerr and Hobbs, 2002). However, the force behind banning hormone-treated beef and GM crops came from consumers and environmentalists in the EU. These forces in the EU have become influential enough for governments to impose sanctions against products that consumers and environmentalists feel are unsafe. However, since the WTO does not have the mechanisms to consider political and consumer-motivated disputes, it has failed to effectively resolve such trade disputes.

Functional issues

The third category of issues that creates limitations to the success of the WTO in dealing with disputes is related to the role of the WTO as an international entity. This category includes highly complicated issues regarding international *vs* domestic laws and the role of the WTO in prescribing standardized mandates for the member countries.

International laws vs domestic laws. The appropriateness of the standards that the panel and the Appellate Body of the WTO employ to review the trade disputes can create tremendous controversy. These standards can be in conflict with the national standards of the issues under dispute (Oesch, 2003). For example, in the case of hormone-treated beef, the standards of review of

the Appellate Body were in conflict with the national standards. As Oesch (2003) notes, which standards should govern the decisions of the panel – review of the findings at the domestic level or conducting an independent fact-finding assessment of the issues under dispute?

The rulings of the WTO can conflict with the domestic laws of a country. According to US laws, there are two limitations to the power of a treaty: A treaty ''may not permit a change in the character of the government … and a treaty may not by its terms or application violate the individual constitutional rights'' (McBride, 2001: 666).

However, WTO rulings may infringe upon both of these areas. The US Congress approved and signed the WTO laws in 1994. However, it annexed a provision to its approval stating that WTO decisions or laws that are contrary to US laws, including any laws dealing with the protection of humans, animals, plant life, health, and the environment, shall have no effect (McBride, 2001). According to the US Constitution, the power of the government is not transferable to other parties, and the WTO is neither part of the US government nor accountable to it. However, the WTO is in a unique position that can issue mandates that might be contrary to a country's domestic laws such as tax laws.

Standardization of the mandates. The underlying factors in agricultural trade disputes between the US and the EU are not just about hormone-treated beef, the banana tariff, or GM crops, but fundamental differences in political and social–cultural dimensions. The US and Canada have extensive collaborative research in the area of GM and hormone-treated foods. As a result, the food regulatory agencies in these countries have worked closely for the approval of these products (Isaac *et al.*, 2000). However, the EU directives regarding the impact of new technologies on food and environmental safety allow for no risk. In addition, the EU member states are allowed to impose unilateral trade barriers on items they consider to have potential health hazards.

In the EU, the consumers' concern over GM and hormone-treated foods plays a much more pronounced role in the definition of safe agricultural products. There is also a tremendous pressure by environmental groups that are politically more influential in the EU than in many other regions of the world. Furthermore, EU directives have more detailed policies regarding consumer and environmental protection than other economic integration pacts such as NAFTA.

Therefore, the social–cultural differences involving consumer and environmental factors and the historic political ties of several European countries to their past colonies in addition to differences in political philosophies provide a fertile ground for disputes and the lack of incentives to resolve them. In addition, the vast differences between developing and developed countries regarding the standards of health and safety for consumers and the physical environment do not lend themselves to equitable power and the willingness to abide by the SPS and TBS Agreements and the rulings of the WTO. Adding to this dilemma is that the SPS Agreement recognizes nation-specific food health and safety regulations in regard to food additives. Allowing differentiation in rules and regulations, such as the standards of health and safety, will put the developing countries in danger of becoming a test or a dumping ground for the products considered unsafe in developed countries. With the social–cultural, economic, technological, and political differences among the member countries, the quandary over the imposition of international mandates that may be against the domestic laws of these countries, and the differentiation in the acceptance of such mandates, makes the task of harmonizing international trade rules and regulations a colossal one.

Analysis

The challenge for the WTO is how to be perceived as an objective, equitable, and effective means for trade dispute resolution while addressing the concerns of consumers, environmentalists, and developing countries in addition to getting the more powerful nations to implement its rulings. Table 2 provides a list of the proposed recommendations to address the issues that were discussed in the previous sections of this paper.

Analysis – technical issues

To address the issues related to the technical issues, rules, procedures, and the body of the language of the WTO, several remedies are proposed as presented in Table 2.

To reduce the duration of the process of reviewing a case and generating a report, the WTO needs to eliminate the time-consuming practice of providing summarized reports of complaints to each disputing party. Another means to keep the stated time-line is changing the status of the third parties

Table 2 Recommendations to address the issues of the WTO

1. *Analysis – technical issues:*
   - Elimination of summary report
   - Third party involvement
   - Transparency in procedures
   - Cooperative (national and WTO) standards of review
   - Multilateral negotiations
   - Semi-permanent panel
   - Harmonization of standard of health
   - Standardization of labeling of ''novel products''
   - Elimination of non-compliant party

2. *Analysis – conceptual issues:*
   - Aggregate retaliation
   - Monetary retaliation
   - Training
   - Sharing information
   - Expansion beyond supplier focus
   - Formal representation of different interest groups

3. *Analysis – functional issues:*
   - Collaborative and transparent procedures
   - Multilateral negotiation
   - Consensual partial implementation of the rulings
   - Harmonization of rules and regulations
   - Collaborative scientific research

and allowing them to join the main complainants rather than filing separate similar complaints. Implementation of such a rule can also reduce the time needed to process the paperwork and to review the complaints.

A major criticism of the WTO is the lack of transparency in its procedures. Allowing a country to ask for the reports by other members and providing public access to the reports (with the exemption of confidential parts) would be a step toward making the WTO procedures more democratic and less secretive. The recent decision of the WTO to provide access to such reports is a positive step to address the criticism in regard to the lack of transparency in its procedures.

As for the controversy over the standards utilized in reviewing the facts by the panel and the Appellate Body in rendering a decision – based on the facts provided by the disputing parties or their national laws *vs* the independent fact-finding and utilization of the WTO rules in legal reviews – a remedy would be to increase the appropriate level of expertise of the members of the panel and the Appellate Body. In the review of the facts involved in a dispute, the WTO panel should combine the expertise of the panel members with the findings at the national level in rendering a decision. In cases that the disputing members do not have the adequate scientific resources in providing the facts, the expertise present in the WTO panel in conjunction with the expertise of appropriate international entities not involved in the dispute should provide the standard of review.

For rendering the legal decisions by the Appellate Body, in reviewing the standards, the relevant legal national entities should be consulted. As to the countries that lack the expertise in understanding the complex international laws and regulations, training and creating the legal expertise are very much needed.

Another issue regarding rules and policies is that the WTO allows only bilateral negotiations. Replacement of bilateral negotiations with multilateral agreements and flexibility by recognizing partial implementation of the remedies with the agreement of the parties involved in a dispute can reduce hostility and improve the stability and harmonization of trade relationships, thereby improving the effectiveness of the WTO in resolving trade disputes.

An additional concern regarding WTO rules and procedures is the composition of the review panel and its lack of permanency that do not allow accumulation of expertise in resolving trade disputes. Establishment of semi-permanent panels can address this issue and contribute to the enhancement of the expertise and the knowledge of the panel members in dealing with complex trade disputes.

Furthermore, the ambiguity of the body of the language of the WTO is another technical issue that needs to be addressed. Clarification of the SPS and TBS articles on standards of health, degree of risk, ''precautionary measures,'' and definition of ''novel products'' is imperative to address some of the major issues that have risen in agricultural product trade disputes as evident by the GM crop and the hormone-treated beef cases.

The distinction between utilization of the scientific proof guidelines of the SPS and TBS Agreements for the purpose of trade protectionism *vs* the utilization of these guidelines for the purpose of current and future protection of consumers, the environment, animals, and plants is a complex issue. This is specifically important since the agriculture industry has been one of the most difficult to bring under international policies and regulations. Most countries have protected the agricultural sector through various economic and political policies such as subsidies, import barriers,

and tax breaks. In addition, other considerations (e.g., environmental, consumer safety, and cultural issues) have compounded the complexity of negotiating international policies and reducing the barriers to trade for agricultural products.

The main focus of the Uruguay Round at Punta del Este in September 1986 was to address trade issues in agricultural sectors. Hence, clarification and harmonization of standards of health for humans, animals, and plants, and protection of the environment are of the utmost importance to ensure that developing countries would not be used for testing and/or dumping of unsafe products in addition to inhibiting different interpretations of such standards and their utilization for supplier-protectionist measures.

Furthermore, clarification of the language of labeling of food items and the concept of ''novel products'' of the TBS Agreement need to be addressed. The major factors underlying the lack of detailed or uniform labeling of food products are the diversity in the levels of education and awareness of consumers and the influence of environmental groups. Clarification of the definition of ''novel products'' and standardization of labeling of food products are important steps to distinguish between measures taken by different countries to protect the future health of consumers and the environment *vs* the supplier-protectionist acts.

A further technical issue hampering the effectiveness of the WTO as a trade dispute resolution body is implementation of its rulings. As discussed previously, such rulings can be open to interpretation and non-compliance by the losing party. To address this issue, creating penalties such as elimination of non-compliant countries from further participation in the WTO dispute discussion process is a tool that can be used to mandate that the losing parties implement WTO's rulings.

Analysis – conceptual issues

The inequality of political and economic power between the developed and developing countries has put a colossal burden on the WTO to be considered an objective international entity to deal with trade disputes. The US and the EU have enough equilibrium in cross-Atlantic trading to make the threat of sanctions or retaliation a reality. However, such verdicts even if issued by the WTO cannot be implemented by any effective means when the parties to a trade dispute do not have a balanced trade power. Even between the super powers, the US and the EU, we have witnessed trade disputes that have dragged on for a long period of time and on occasions without any real resolution.

Hence, the concern of the developing countries as to their lack of retaliatory power is an important matter that the WTO needs to remedy. Several developing countries have proposed the replacement of sanctions and retaliatory acts with compensation and monetary damages and/or collective retaliatory actions. Either of these changes can assist in equalizing the retaliatory power of developing countries and their ability to collect compensation. Replacement of trade sanctions with monetary damages can be advantageous to both the economy and the harmed industry, since retaliatory actions usually result in sanctions against other industries than the industry under dispute (Wuger, 2002).

Another issue related to the inequality of trade power between the developed and developing countries is the developing countries' lack of legal resources, knowledge, and expertise to deal with complex trade disputes and international laws. Training staff from developing countries to enable them to work with the WTO policies and dispute resolution tactics can enhance the capabilities of these countries to deal with complex issues of international trade disputes. In addition, sharing information to highlight international trade violations cannot only increase the level of expertise and knowledge regarding international trade disputes, but it can also improve the lack of ''transparency'' in the WTO procedures that was previously discussed.

Furthermore, a fundamental structural shortcoming in the conceptual underpinnings of the WTO is its concentration on producer-induced barriers. The traditional trade disputes have been usually based on supplier-protectionist measures, such as implementation of tariffs and quotas, as in the case of the US steel and the banana disputes. In such cases, the quantification of the costs and benefits to the parties involved are not difficult. However, as manifested in the cases of the hormone-treated beef and the GM crops, the new forms of trade disputes are not necessarily based upon supplier-motivated trade barriers. Even though the calculation of the costs to the US as far as the ban on its hormone-treated beef may be simple, the costs of the potential health risks and environmental damages are not as simple to quantify. Therefore, inclusion of new directives to deal with trade barriers created for the protection of other entities,

such as consumers, and recognition of the legitimacy of the concerns of such groups is extremely important for successful trade dispute resolutions by the WTO and reducing hostility toward the organization.

The acceptance of amicus curiae (friends of the court) briefs by the non-governmental environmental organizations by the WTO in the dispute over the GM products may be a way to admit reports by the non-governmental agencies to the WTO (Eckersley, 2007). Even though there was no indication that in the case of the GM products such reports influenced the decision of the WTO panel, amicus curiae reports can be a mechanism to allow accountability to the public and civil sectors in the WTO dispute resolution processes (Eckersley, 2007).

Allowing interested non-governmental organizations and companies in addition to disputing parties to attend meetings and have formal participation can bring multiple perspectives to a dispute and facilitate rendering a more comprehensive decision. The inclusion of all legitimate interested parties can create more assimilated rather than discordant groups of complainants, improve the transparency of procedures, expand the WTO's horizon beyond supplier-specific issues, and enhance the inclusiveness of the WTO as an international dispute resolution body.

Analysis – functional issues

The issues related to the functional role of the WTO as a unique entity with the capability to issue international trade mandates against the domestic laws of a country are more complicated to remedy. For the trading partners, powerful and less powerful, it is the predictability and stability in trade relationships rather than volatility and instability in trade policies that should be considered as the building block of international trade organizations such as the WTO. As discussed in the above sections, implementation of transparency improvements, circulation of all reports to parties involved, sharing information to delineate the international trade violations, allowing for multilateral negotiations and partial implementation of rulings, and inclusion of other entities and interest groups are some of the measures that can facilitate trade harmonization and more effective implementation of the rulings of the WTO, specifically when the rulings of the WTO entail modification of a national law or a policy.

Another factor that has created major conflicts with domestic laws of countries is the ability of the WTO to issue international safety and health directives. This issue has been at the center of hostile and antagonistic demonstrations against the WTO. Countries such as Canada and the US are in the forefront of bioengineering technologies. Crops such as corn, canola, soybean, and cotton have been GM for years in the US and Canada and account for more than half the production of these crops. With the current bioengineering research, there will be more varieties of crops added to the list of GM agricultural products. Increases in productivity through drought and pest resistance, modification and manipulation of the nutrients within crops, and developing to larger cattle are major incentives for the producers and suppliers of agricultural products in private and public sectors to research. However, the lack of decisive results of research regarding the potential long-term impacts of the genetic modification of crops on plants, animal species, and the physical environment in addition to the long-term impact of hormone-treated beef consumption on humans, specifically children below the age of puberty, are factors that have made consumers and environmental groups raise serious concerns about the development of GM crops and hormone-treated beef.

The benefits of the GM crops for drought resistance and added nutrients can alleviate some of the problems of the lack of irrigation and adequate nutrition in poor countries, but the long-term impact of such gene modification on the food chain, environment, humans, and other animal and plant species should be thoroughly researched. The WTO needs to create and facilitate avenues that allow the disputing parties to participate in joint scientific research, which can lessen delays in gathering scientific information and enhance better collaboration and understanding among the disputing parties.

Conclusion

Review of the cases brought to the WTO indicates successful dispute resolution of the cases that were motivated by economic and/or political issues to protect suppliers and where the impact or damages were not difficult to quantify. The banana and steel disputes are examples of such cases. In these cases, calculation of the damages was more straight forward and also the underlying economic and political factors were not abstract and philosophically intangible constructs; as a result, these

disputes were successfully resolved without a long and exhaustive process. However, in the GM crop and hormone-treated beef cases, in addition to economic and political issues, other factors such as social–cultural and philosophical differences, concerns regarding the protection of the physical environment and consumers, and the potential future impacts of new technologies were the motivating factors underlying the disputes. In these cases, with environmentalists and consumers comprising the major interest groups, the WTO had to deal with complicated philosophical issues that were difficult to measure, quantify, and resolve to the satisfaction of all parties involved.

In the current global trade arena, in addition to the governments, other special interest groups can have a major impact on trade negotiations. At this time, the policies of the WTO, like those of its predecessor, GATT, are mostly based on supply-driven concepts. However, in the cases of GM crops and hormone-treated beef, the composition of the special interest groups was very different from supplier-protectionist cases. Hence, the challenge to global trade policies is how to incorporate abstract ideologies into a field that has traditionally and historically dealt with numbers and figures, without encroaching upon the sensitive social–cultural, environmental, health and safety, and ethical principles and laws of a country.

As previously discussed, there are several tactics that can enhance the potential of conflict resolution of the WTO (e.g., transparent process, change in remedial avenues, and inclusion of other parties). However, with the new biotechnological advents, international health standards and risk assessment should be a major building block for dealing with trade barriers. Such standards should be set through international collaborative scientific research funded by international agencies with the participation of scientists from a variety of nations. Furthermore, successful resolution of disputes in this era is not only a matter of cooperation among governments, private businesses, and special interest groups, but also of the utmost importance is the possession of in-depth information regarding international trade and specific issues under discussion by the individuals acting as the consultants or intermediaries between these parties and the WTO.

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