

ADR

Modern Trend and Best Practices

Foreword by

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Foreword

It is with great pleasure that I introduce this insightful compilation, "*ADR: Modern Trend and Best Practices.*" In a world marked by rapid change, the field of Alternative Dispute Resolution (ADR) has not only adapted but also flourished, becoming an integral aspect of how societies, businesses, and individuals approach conflict resolution. This book, expertly curated by the editors, brings together a wealth of knowledge, diverse perspectives, and practical insights from academicians, practitioners, and scholars in the realm of ADR. The collective wisdom contained within these pages offers a comprehensive overview of the contemporary trends and best practices that define the landscape of ADR today. As we navigate an era marked by technological advancements, cultural diversity, and an increasing interconnectedness, the relevance of ADR in providing efficient, fair, and innovative dispute resolution mechanisms cannot be overstated. This compilation explores the cutting-edge applications of ADR across various domains, providing readers with a deep understanding of its transformative potential. Each chapter stands as a testament to the adaptability and resilience of ADR methodologies in addressing the challenges posed by a rapidly changing world. From the exploration of online dispute resolution to the examination of ethical considerations, each chapter in this book contributes to a holistic understanding of ADR. It is my hope that this collection serves as both a valuable resource and an inspiration for scholars, practitioners, students, and anyone interested in the evolving dynamics of dispute resolution.

TABLE OF CONTENT

<i>Foreword</i>	iii
<i>Preface</i>	v
CHAPTER-1	1
<i>Alternative Dispute Resolution (ADR) in India: Exploring its Evolution and Various Mechanisms</i>	
	Nisha K. M.
CHAPTER-2	23
<i>Legislative Recognition to Alternate Dispute Resolution in India</i>	
	Dr. Mohammad Arif
CHAPTER-3	64
<i>Online Dispute Resolution (ODR): Transformative Pathways to Justice</i>	
	Dr. Syed Ali Nawaz Zaidi
CHAPTER-4	108
<i>Quest for Attaining Sustainable Society through Alternative Dispute Resolution: Effectual Mechanism for Sustainable Justice</i>	
	Dr. Mirza Juned Beg
CHAPTER-5	122
<i>ADR and Access to Justice: Bridging the Gap</i>	
	Dr. Mohd Wasim Ali
CHAPTER-6	161
<i>Darul Qaza as an Alternative Dispute Resolution Mechanism: Evaluating its Influence on Access to Justice</i>	
	Dr. Naseem Ahmad

- CHAPTER-7** 174
Fundamentals of Alternative Dispute Resolution Mechanism and Rule of Law: A Closer Contemporary Perspective and Prospects
 Mohd Sufiyan Khan
- CHAPTER-8** 186
International Trade and Dispute Settlement Mechanism: A Tight Rope Economic Development & Fairness
 Dr. Seema Siddiqui
- CHAPTER-9** 197
Synergy between SDGs and ADR as a Tool to Achieve Sustainable Future
 Dr. Sandeep Kumar Suman
- CHAPTER-10** 216
Mediation and Negotiation Strategies: Navigating Paths to Resolution
 Noveed Sarwar Khan
- CHAPTER-11** 240
Exploring the Social and Economic implications of Alternative Dispute Resolution: beyond the Courtroom
 Dr. Navpreet Kaur
- CHAPTER-12** 253
Challenges and Future Directions in Alternative Dispute Resolution (ADR)
 Saqib Rasool
- CHAPTER-13** 276
Alternate Dispute Resolution (ADR) in Specific Industries: Impact, Effectiveness, and Comparative Analysis
 Dr. Raina Midha

CHAPTER-14 **294**
Dispute Resolution Mechanism in a Democratic Setup: A
Comparative Analysis of Mediation, Arbitration, Conciliation and
Negotiation

Arvind Kumar

CHAPTER-15 **304**
*Harmony Across Borders: Navigating Cultural and Ethical
Considerations in Alternative Dispute Resolution*

Dr. Mohd Rafiq Dar & Dr. Irshad Ahmad

CHAPTER-16 **318**
*Application of Conflict Resolution and Mediation Procedure:
Creative Strategy of an Alternative Forum*

Mohammad Faiz Khan

*Alternative Dispute Resolution (ADR) Mechanisms has emerged as a
cornerstone in the legal system, playing an active role
in resolving disputes outside traditional courtroom settings. This chapter
explores the multifaceted landscape of ADR, encompassing a spectrum
of processes that offer viable alternatives to lengthy and resource-
intensive court proceedings. It further sheds light on the rationale behind
the introduction of ADR mechanisms, emphasizing their capacity to
expedite resolution and alleviate the burden on the judicial system.
Drawing on the Indian legal context, this book chapter navigates through
the nuances of laws governing the settlement of disputes through ADR
mechanisms. It explores the evolution of ADR in India and the impetus
behind its integration into the legal framework.*

*Keywords: Arbitration, Conciliation, Mediation, Alternative
Dispute Resolution (ADR), Legal Services Authorities Act.*

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CHAPTER-8

International Trade and Dispute Settlement Mechanism: A Tight Rope Economic Development and Fairness

Dr. Seema Saini

"For the only way in which a durable peace can be created is by world-wide restoration of economic activity and international trade." -James Forrestal

Abstract

This book chapter delves into the intricate dynamics of international trade and the mechanisms employed for resolving disputes, emphasizing the delicate balance between economic development and fairness. As globalization continues to shape the interconnected world economy, this chapter explores the challenges and opportunities presented by international trade agreements and the dispute settlement mechanisms embedded within them. It critically examines how these mechanisms navigate the fine line between fostering economic growth and ensuring fairness in addressing disputes among nations. The chapter scrutinizes key international trade agreements, their evolution, and the impact of dispute resolution mechanisms on economic development. Additionally, it considers the role of fairness in shaping these mechanisms, highlighting the complexities involved in reconciling the diverse interests of nations with varying levels of economic development. Through a comprehensive analysis, the chapter contributes to the ongoing discourse on creating a robust and equitable international trade framework that supports economic development while upholding principles of fairness and justice.

Key words: Trade, dispute, mechanism, settlement, challenge.

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Introduction

The World Trade Organization (hereinafter referred as WTO) has been criticized since its creation. The focus of his criticism is on the long-standing inefficiency of multilateral negotiations, the potential impact of multilateralism on the economic, social and environmental conditions of member states, and the procedures and policies provided. It focused on inadequate enforcement mechanisms on pending disputes, lack of clarity in decision-making, ambiguous special and differential provisions, and asymmetric application of WTO Disbursement of Disputes (hereinafter referred as DSU) provisions by developed and developing countries. The WTO DSM is an expensive dispute resolution option, so it is not equally affordable for all his WTO members.

In contrast to developed Member States, developing countries face significant problems in relying on WTO DSU provisions because they do not have sufficient resources to monitor and enforce their rights under international trade law. The WTO DSU is a set of rules and procedures that govern the settlement of disputes between member countries. It provides a transparent and predictable process for resolving trade disputes. The DSU emphasizes the importance of negotiations, consultations, and mediation to reach a mutually agreeable solution.

The dispute resolution mechanism works in several stages. First, the parties will hold discussions to resolve the dispute amicably. If negotiations fail, the complaining party may request the appointment of a committee to investigate the facts. The panel will consider the claims and evidence presented by both sides and produce a report containing its findings and recommendations. Parties can appeal the panel's decision to the Appellate Body, an independent panel of experts appointed by the WTO. The appellate body considers the legal aspects of the dispute and makes a final

decision. If the losing party fails to implement the recommendations, the winning party may seek permission to impose trade sanctions as a means of enforcing compliance.

Dispute resolution mechanisms serve several purposes such as it promotes the rule of law in international trade by providing a neutral and transparent process. It also ensures effective enforcement of trading rules and obligations. And also, it helps level the playing field by resolving disputes and reducing the risk of trade wars. However, dispute resolution mechanisms play an important role in maintaining the stability and predictability of international trade. This will enable countries to resolve disputes in a systematic and fair manner, thereby promoting trust and cooperation in the global trading system.

International Trade and Dispute Settlement Mechanism: Meaning and Key Concepts

International trade refers to the exchange of goods and services between countries. It involves the movement of products across international borders for commercial purposes. There are two main types of international trade:

- *Export*: The sale of goods or services from one country to another is called export.
- *Import*: The purchase of goods or services from another country is called import.

Governments often impose barriers to restrict imports and protect domestic industries. Some common trade barriers include tariffs, quotas, subsidies, and non-tariff barriers (NTBs).

A dispute settlement mechanism is a process by which countries can resolve disputes related to international trade. It aims to ensure that trade is conducted fairly and in accordance with international rules and agreements. There are several types of dispute settlement mechanisms, including:

- **Bilateral Negotiations:** Countries can negotiate directly with each other to resolve disputes. This approach is typically used for less complex issues.
- **Multilateral Negotiations:** Countries can negotiate through international organizations such as the World Trade Organization (WTO) to resolve disputes related to WTO rules. This approach is typically used for more complex issues affecting multiple countries.
- **Arbitration:** Countries can submit disputes to an independent arbitration panel for resolution. The panel's decision is binding and enforceable through the WTO dispute settlement system.

The WTO provides a framework for resolving disputes related to international trade through its dispute settlement system. This system includes a dispute settlement body, a panel system, and an appellate body that reviews panel decisions. The WTO also provides a forum for negotiating new trade agreements and resolving disputes related to existing agreements through its dispute settlement body and panel system.

Interplay between International Trade and Dispute Settlement Mechanism

International trade is the exchange of goods and services between countries. It plays an important role in promoting global economic growth and development. However, disagreements and disputes can arise between countries regarding trade policies and practices. This is where dispute resolution mechanisms come into play. A dispute resolution mechanism is a system that provides a framework for resolving commercial disputes between nations. It ensures that all parties comply with the rules and regulations of international trade agreements. There are several dispute

resolution mechanisms available, the most well-known being the WTO's Dispute Settlement Agreement (DSU).

International trade and dispute settlement mechanisms are closely interconnected. Dispute settlement mechanisms are essential components of international trade agreements, as they provide a means for resolving disputes that may arise between trading partners. These mechanisms help to ensure that international trade flows smoothly and predictably, as they provide a framework for addressing disputes in a fair and impartial manner. The WTO process is used to resolve trade disputes under Dispute Settlement Agreement. The system has already achieved much and has delivered some of the necessary characteristics of security and predictability demanded by traders and other market participants and required by dispute resolution agreements under Article 3. Disputes arise when member parties consider and another member parties violates the agreements concluded at the WTO. Member States are the drafters of these Agreements because they are of great importance for exchanges between them.

The relationship between international trade and dispute settlement mechanisms is multifaceted. Here are some key ways in which these two concepts are interconnected:

- Dispute settlement mechanisms help to encourage compliance with international trade rules by providing a means for addressing violations. When trading partners know that there is a mechanism for resolving disputes, they are less likely to engage in unfair or protectionist practices, as they know that they will face consequences if they do so.
- Dispute settlement mechanisms promote predictability in international trade by providing a clear and transparent process for addressing disputes. This predictability helps to reduce uncertainty and risk for businesses, as they know

that disputes will be resolved in a fair and impartial manner.

- Dispute settlement mechanisms often involve dialogue and negotiation between the parties involved, which can help to resolve disputes in a more amicable and mutually beneficial way. By facilitating dialogue, dispute settlement mechanisms can help to prevent disputes from escalating into more serious conflicts, which can have negative impacts on international trade flows.
- Dispute settlement mechanisms help to enhance trust between trading partners by providing a means for addressing disputes in a fair and impartial manner. This trust is essential for promoting ongoing cooperation and collaboration in international trade, as it helps to ensure that disputes are resolved in a way that is acceptable to all parties involved.
- Dispute settlement mechanisms play an important role in protecting intellectual property rights in international trade, as they provide a means for addressing infringements of intellectual property rights by other trading partners. By protecting intellectual property rights, dispute settlement mechanisms help to promote innovation and creativity in international trade, which can benefit all parties involved.

However, the interplay between international trade and dispute settlement mechanisms is complex and multifaceted. These two concepts are closely connected, as dispute settlement mechanisms help to encourage compliance with international trade rules, increase predictability, facilitate dialogue, enhance trust, and protect intellectual property rights. As such, it is essential that dispute settlement mechanisms continue to be an integral part of international trade agreements, as they play a critical role in ensuring fair and predictable international trade flows.

Establishment of WTO Dispute Settlement Mechanism

The WTO Dispute Settlement Body (hereinafter referred as DSB) is established by Article 2 of the DSU and is comprised of representatives from all WTO members and administers the WTO dispute settlement process. Similar to GATT, DSB typically acts according to consensus (i.e., no objections). However, the DSU is seeking to reverse previous practice in order to prevent its individual members from blocking certain decisions of the DSB that are considered important to an effective dispute resolution system. Thus, unless it decides by consensus not to do so, the DSB will:

- a. Approve requests to establish panels,
- b. Adopt panel and Appellate Body reports, and
- c. If requested by the prevailing Member in a dispute, authorize the Member to impose a retaliatory measure where the defending Member has not complied.

While the DSU continues past dispute practice, a variety of new features are aimed at strengthening the prior system. These include a "reverse consensus".

Phases of WTO Dispute Settlement Resolution

The WTO dispute settlement process consists of three main stages:

1. Consultations

According to Article 4 Under the DSU, a WTO member can request consultations with another member on "measures affecting the implementation of covered agreements concluded within the member's territory." If a WTO Member requests consultations with another Member under her WTO Agreement, the latter Member must initiate consultations with the other Member within her 30 days;

2. Panel and, if requested, Appellate Body review

A WTO member requesting the establishment of a panel must do so in writing and identify the specific measure at issue and provide a brief summary of the legal basis for the complaint sufficient to clearly set out the issue. In the GATT and now in the WTO, member states can object to the measures of other member states "as applied", or both. An "per se" action challenges a measure without regard to its application in the particular circumstances and, as the WTO Appellate Body explains, the defendant Member State must identify the purpose is to prevent people from engaging in such acts. Within 60 days after the panel report is distributed to WTO members, the DSB meeting must adopt the report, unless the parties to the dispute appeal, or the DSB decides not to adopt it by consensus. Article 17. 6 of the DSU limits appeals to the legal issues raised in the panel's report and the legal interpretations developed by the panel.

3. If needed, implementation

If a WTO decision finds that the respondent Member State has breached its obligations under the WTO Agreement, the Member State must notify the DSB of its implementation plan within 30 days of the adoption of the panel report and the AB report. It does not have to be. If it is not practical for a member to comply with an obligation immediately, member will be given reasonable time to do so. Member States are expected to fully implement her WTO decision by the end of this period and act on the decision at the end of the period. Compliance can be achieved by repealing, amending or replacing inconsistent her WTO measures.

Compliance Panels

If the disputing parties disagree as to whether the respondent member has complied, the disputing member may request the convening of a compliance panel pursuant to Article 21.5 of the

DSU. In this case, the disagreement may relate to whether compliance measures exist or whether the measures taken to comply are compatible with his WTO Decision. The DSU provides that the original committee should reconvene, if possible, to hear compliance disputes. Compliance panel for this period if is required. The Compliance Panel's report can be appealed to her WTO Appellate Body, and both her report must be accepted by her DSB.

WTO decision in this case, disputing parties may request the convening of a Compliance Committee pursuant to Article 21. 5. The Compliance Committee will issue its report within 90 days from the referral of the dispute, but may extend this period if necessary. The Compliance Panel's report can be appealed to her WTO Appellate Body, and both her report is subject to acceptance by her DSB. If the respondent Member State fails to comply with her WTO decision within the specified compliance period, the dominant Member State may request that the respondent Member State fail to comply with her WTO decision, and such request shall in such cases, Member States shall negotiate compensation agreements. No agreement is reached within 20 days.

Compensation and Suspension of Concessions

If the respondent Member State fails to comply with a WTO decision within the specified compliance period, Article 22 allows the prevailing Member State to require the respondent Member State to negotiate a compensation agreement. If such a request is made and he fails to reach an agreement within 20 days of the compliance period, or more likely, if no negotiations were requested, the prevailing member may grant her DSB permission to retaliate. Suspend concessions and obligations granted to the defaulting Member under the WTO Agreement. Article 22 provides that the DSB shall approve the request within 30 days

after the expiry of the compliance period, unless the DSB decides not to do so by mutual agreement or the defending Member State requests arbitration of her retaliatory proposal. It stipulates that it must be done.

Generally, Member States should first seek to cease making concessions or commitments in the same trade area as the one at issue in the dispute. If this is "*unfeasible or ineffective*", Member States can seek a suspension of concessions in other areas under the same WTO Agreement. However, if suspension of concessions in other areas under the same WTO Agreement is "*not practicable or effective*" and "*the circumstances are sufficiently serious*", a member may be entitled to suspend concessions under another WTO Agreement. They can seek concessions or suspension of commitments, or they can go beyond the WTO Agreement.

Conclusion

The fact that both developed and developing countries routinely use the WTO's dispute settlement process is proof positive that the system is effective and that WTO members still have faith in it. The mechanism is essential to guaranteeing adherence to WTO norms. This encourages economic progress and results in more desirable commercial ties amongst members. Dispute resolution is a central pillar of the multilateral trading system and the WTO's major contribution to global economic stability. Without a means to resolve conflicts, rules-based systems become less effective because rules cannot be enforced. The WTO process emphasizes the rule of law and makes the trading system more secure and predictable. The system is based on well-defined rules that include procedures for case completion.

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- Top of Form