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RESEARCH ON WTO DISPUTE SETTLEMENT MECHANISM

Abstract:The Dispute Settlement Mechanism (DSM) of the World Trade Organization (WTO) is the cornerstone of the rule of law in international trade. It ensures the stability and predictability of global trade by providing a fair and efficient platform for dispute resolution. Resolving the crisis of the WTO Appellate Body and the dilemma of the dispute settlement mechanism is a priority issue for WTO reform. To address the various difficulties in the operation of the Appellate Body, China, along with Japan, Canada, and other member countries of the WTO, have explicitly proposed multiple reform plans. However, due to the failure to meet core U.S. interests, success has not been achieved. Currently, the rise of global trade protectionism and the loss of control over international capital flows have exacerbated this situation. With the WTO Appellate Body in continuous paralysis and the MPIA only in its initial exploratory phase, there is an urgent need to find a solution to this crisis. Following the 12th WTO Ministerial Conference in 2022, WTO dispute settlement mechanism reform negotiations entered a new phase, with the U.S. proposal becoming a focal point. Although progress has been made in the current WTO dispute settlement mechanism reform negotiations, significant challenges remain in terms of conceptual understanding, legal technology, issue interconnection, and negotiation deadlines, and there is considerable uncertainty about whether a comprehensive solution can be reached on schedule. To maintain the multilateral trading system and international economic and trade rule of law, it is necessary to prepare for the future and explore new ways to break the deadlock. Based on the demands of all parties and the reasons for the formation of the negotiation deadlock, it is recommended that WTO members enhance the flexibility of negotiations and consider a compromise solution characterized by parallel coexistence to promote the restoration of good functioning of the WTO dispute settlement mechanism. This article aims to comprehensively study the structure, operation, and challenges faced by the WTO dispute settlement mechanism and to propose corresponding improvement suggestions. The article first outlines the historical background and basic framework of the WTO dispute settlement mechanism, then discusses the main challenges currently faced by the dispute settlement mechanism, such as the shutdown of the Appellate Body, political games between member states, and low efficiency of the mechanism. Finally, the article

proposes a series of improvement measures to strengthen the functions of the WTO dispute settlement mechanism and maintain the vitality of the multilateral trading system.

Introduction. Since its establishment, the WTO dispute settlement mechanism has become the main platform for the settlement of international trade disputes, and its unique design and operation mode has provided an important legal guarantee for global trade. However, with the changing international trade environment and the increasing divergence among member states, this mechanism also faces unprecedented challenges. This paper will analyze the current situation of WTO dispute settlement mechanism from many angles and explore its future development direction.

Research Background. To address international trade disputes among member states, to mitigate internal conflicts between the disputing parties, and to maintain the world trade order, the WTO was established. However, as the relationships between WTO member countries have become increasingly complex, the current WTO dispute settlement mechanism is facing a difficult situation where the Appellate Body cannot adjudicate cases due to a lack of judges, with 29 cases currently pending before an empty Appellate Body. The U.S. veto on the appointment of judges not only prevents member states from obtaining a sufficient number of qualified appellate personnel but also severely affects the functioning of the international multilateral mechanism. The suspension of the Appellate Body by the WTO introduces uncertainty into the dispute settlement process, posing a significant threat to the multilateral trading system and global trade development. At the same time, due to the inherent flaws within the Appellate Body and a lack of awareness in the international community about this issue, timely reform and improvement of the mechanism have not been possible. Although a temporary appellate arbitration arrangement has been established, this arrangement is only a temporary measure taken while the Appellate Body is not functioning, with the ultimate goal being to restore the normal operation of the Appellate Body.

Structure and Operation of the WTO Dispute Settlement Mechanism

The WTO dispute settlement mechanism originated from the dispute settlement practice during the General Agreement on Tariffs and Trade (GATT). After the deepening and expansion of the Uruguay Round negotiations, the current institutional framework has been formed. The mechanism focuses on the Dispute Settlement Understanding (DSU) and establishes a complete process from consultation to implementation. As the highest judicial organ of the appellate procedure, the role of the appellate body is to ensure that the appellate body can conduct independent and comprehensive judgment under fair and reasonable conditions, so that the appellate body can operate effectively. The establishment of the appellate body is mainly designed to avoid trial errors, omissions or unfair judgments. The establishment of the appellate body is largely conducive to the reduction of the number of appeals and the reduction of litigation costs, and at the same time, it can better safeguard the interests of the parties. Now, the Appeal Trial Procedure and Article 17 of DSU complement each other, jointly forming a relatively complete system design of the appellate body.

Challenges Facing the WTO Dispute Settlement Mechanism

The shutdown of the appellate body. Due to differences among the member states over the appointment of new members, the appellate body was suspended on 10 December 2019 by one member blocking the selection of new members. **Error! Reference source not found.**[1] The 125 members submitted 63 collective letters to the DSB, demanding to resume the selection of new members of the appellate body as soon as possible, but all of them failed. One vote can overturn the appellate body, unbalanced the WTO dispute settlement mechanism, and regress the power-oriented and inefficient dispute resolution mechanism in the GATT period. The open Arbitration Appeal Arrangement (MPIA) initiated by the European Union, Canada, and China has played a positive role in resolving the appeals issue when the appellate body has been paralyzed. However, MPIA is a temporary arrangement, with only one third of the WTO members. During this period, nearly 20 appeals cases cannot be accepted, which violates the legal provisions of DSU's rapid and fair resolution of disputes and the purpose and requirements of article 17 of the appellate body of DSU. [2]

(II) Establish an appeal mechanism with the ability to correct legal errors, resolved by a panel of experts and an appellate tier

The WTO transitioned from GATT's "unanimous consent" to the "reverse consensus" under Article 11, making the establishment of a panel and the adoption of reports automatic and swift. To avoid legal errors in panel reports, the WTO established a permanent Appellate Body to correct legal issues that arise in panel reports. The removal of the appellate mechanism would result in the "lack of mutual checks and balances between the panel and the Appellate Body." Reports adopted under the "reverse consensus" would be subject to legal errors without an appellate review mechanism. The UNCITRAL Working Group III survey report suggests that international investment dispute resolution mechanisms involve the interpretation of a government and international treaties, with multiple arbitrators in the first instance, varying backgrounds and professional levels, all of whom are part-time and lack sufficient time to read the documents submitted by the parties, leading to frequent errors in legal interpretation in rulings. To ensure the consistency of treaty interpretation and to correct legal errors in panel reports in a timely manner, the establishment of an appellate review mechanism is necessary. In investor-state dispute resolution, the establishment of an appellate mechanism is ideal and feasible. Whenever economic and trade disputes involving governments are concerned, an appellate mechanism is needed to correct legal errors in the first-instance panel reports. This is also the trend in the development of international dispute resolution mechanisms. Some members have proposed establishing a single-tier dispute resolution mechanism, which violates the WTO's covered agreements and is contrary to the direction of development of international dispute resolution mechanisms.

(III) Insufficient review period by the appellate body

The DSU imposes strict time limits on the appellate review process, meaning that regardless of when the case is filed, the appellate body must complete its review within 90 days [3]. Due to inherent flaws in the appeal mechanism and insufficient judicial resources, among other reasons, the majority of countries do not allow the appellate body to conduct any form of re-examination or final judgment, making the appeal system an important yet costly judicial procedure. For over two decades, most appeal cases have been concluded within 90 days, but it is undeniable that there are still cases where the review and appellate report cannot be completed within 90 days, let alone the ordinary deadline of 60 days. This results in a large number of appeal cases not being dealt with in a timely and effective manner. In reality, the DSU has established an interim review procedure to reduce the number of cases appealed, but with limited success; most cases are appealed after the panel's report has been published. At the same time, measures taken by some countries to prevent the abuse of this system by the appellate body have been less than satisfactory. As a result, the number of cases accepted by the appellate body has been increasing year by year. With a limited number of members and the increasing complexity of the cases due to the ongoing global economic development, the 90-day review period will inevitably increase the burden on the appellate body. Moreover, during the appellate period, there is a lack of communication between the appellate court and the tribunal, making it difficult for them to understand the applications and opinions of the other parties in a timely manner, further reducing judicial efficiency. Not only that, but because the DSU does not require appellate judges to be resident in Geneva, when parties appeal to the appellate body, the judges must travel from their locations to Geneva, significantly reducing the time available for appellate review. In addition, due to the different regulations on jurisdiction and litigation procedures among national courts, there is a significant disparity between the appellate body and other courts, which severely constrains its work efficiency. It is evident that to ensure the fair and effective enforcement of international commercial arbitration awards, judicial efficiency must be improved and the litigation cycle shortened. Given the restrictive nature of the appellate body's review time limits, when appellate judges are conducting technically complex trials, facing numerous difficulties, or dealing with multilateral complex situations, due to the limited time, they will not be able to conduct a thorough investigation of the case, and the legal analysis may be insufficient, affecting the credibility, reasonableness, and fairness of the entire appellate report.

V. Suggestions for Improving the WTO Dispute Settlement Mechanism

The Dispute Settlement Mechanism (DSM) of the World Trade Organization (WTO) is a key component of international trade law [4], designed to ensure that trade disputes between members are resolved through fair and transparent legal procedures. However, in recent years, the DSM has faced challenges and criticism, including deadlocks in the appointment of Appellate Body members, difficulties in the enforcement of rulings, and inadequate responses to unilateral measures.

Reform the appellate body

The core issue of the current WTO dispute settlement mechanism reform negotiations is how to build an appellate mechanism. This is the main concern of the United States and a core feature that members such as the European Union strive to maintain. First, the proposal to reform the appointment process of the Appellate Body, to increase the number of members, to ensure its continuity and independence, in order to restore its normal functioning. Secondly, regarding the issue of the WTO Appellate Body's delayed hearings, while adhering to the principle of the number of days for hearing deadlines, there should be some flexibility, that is, to allow for the existence of exceptional circumstances.

Strengthen the enforcement of the dispute resolution mechanism

The WTO should establish stricter rules to ensure the effective enforcement of dispute settlement decisions. This could involve improving the supervisory functions of the dispute settlement body and increasing sanctions against the defaulting parties.

(III) Adapting to new trade practices

As the global trade environment changes, DSM needs to update its rules and procedures to better address emerging trade issues such as e-commerce, trade in services, and investment protection.

(IV) Enhancing transparency and public participation

To strengthen the legitimacy and acceptance of DSM, it is necessary to increase the transparency of the dispute settlement process and allow for greater public participation and oversight. This can be achieved through public hearings, online databases, and media coverage, among other methods.

(V) Strengthening consultation and mediation mechanisms

Encourage member states to make greater use of consultation and mediation to resolve disputes, reducing the number of cases entering formal proceedings and improving the efficiency of resolution [5].

(VI) Optimize the presentation of WTO rulings

Two cases involving appeals to the DSU Article 25 arbitration suggest that WTO panels, the Appellate Body, or other adjudicators can improve their legal interpretations or expressions regarding covered agreements by adding qualifying phrases such as "in the context of this case." In this regard, the arbitration tribunal in the Colombia—Frozen Fry Case set an example: the tribunal emphasized that the issues before it shaped its analysis.

VI. Conclusion

The WTO dispute settlement mechanism holds an important position in the field of international trade and investment. The purpose and objective of the Appellate Body and the appellate arbitration are both to resolve trade disputes, maintain the multilateral trading system, coordinate the interests of all parties, and uphold fairness and justice. From the current international situation, the restoration of the Appellate Body will still take some time, and the enforcement of dispute settlement requires not only procedural and rule-based treaty provisions but also the enforcement power guarantee of the dispute settlement body and the flexible application of various "soft" and punitive measures. In addition, the cooperation of the countries involved in the dispute is also crucial. This article analyzes the predicament of the WTO dispute settlement mechanism and makes suggestions, hoping that through reform and innovation, the functions of the WTO dispute settlement mechanism can be strengthened. The WTO can overcome current difficulties, maintain the vitality of the multilateral trading system, continue to provide strong legal support for international trade, and promote the prosperity and development of the global economy.

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ИПОТЕКА НЕДВИЖИМОГО ИМУЩЕСТВА КАК ВИД ЗАЛОГА

С момента вступления в силу Закона Республики Казахстан «Об ипотеке недвижимого имущества» прошло почти 30 лет. [1] За время действия данного закона произошли значительные изменения в правоприменительной практике, связанные с регулированием ипотечных отношений, причем по ряду вопросов эти изменения носили принципиальный характер. В данной статье акцент будет сделан на отдельных аспектах залога недвижимого имущества и специфике его правоприменения. Ипотека является сложным обеспечительным инструментом, поскольку охватывает обязательство в целом. Чаще всего залог недвижимого имущества используется для гарантирования выполнения обязательств, связанных с кредитами и займами. В судебной практике нередко поднимался вопрос о допустимости заключения договора ипотеки в целях обеспечения других видов гарантий (например, банковской гарантии или поручительства). Аналогичным образом положительно решается вопрос о возможности заключения договора ипотеки для обеспечения обязательств, возникающих из договора поручительства.

В статье 303 Гражданского Кодекса Республики Казахстан проводится классификация видов залога по двум основным отличительным признакам - по объёму полномочий сторон договора о залоге и по характеру имущества, используемого в качестве предмета залога. [2] По объёму полномочий сторон договора о залоге, залог делится на ипотеку и заклад. Классифицирующим признаком для выделения ипотеки является предоставление залогодателю или третьему лицу при заключении договора о залоге права владения и пользования предметом залога.

Согласно действующему гражданскому законодательству Республики Казахстан, предметом ипотеки могут выступать предприятия, здания, сооружения, квартиры в многоквартирных домах, транспортные средства, космические объекты, товары в обороте и любое другое имущество, не изъятое из гражданского оборота. При этом отдельные плоды могут быть предметом ипотеки только в том случае, если после отделения они не становятся объектом прав третьих лиц. [2] Таким образом, ипотека охватывает не только залог недвижимого имущества, но и залог движимого имущества, а также имущественных прав, при этом имущество остается во владении и пользовании залогодателя. Именно сохранение заложенного имущества во владении и пользовании залогодателя выделяет ипотеку как особую форму залога в соответствии с нормами Гражданского кодекса Республики Казахстан.