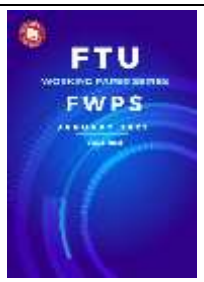

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THỰC TIỄN GIẢI QUYẾT TRANH CHẤP VỀ CHỐNG BÁN PHÁ GIÁ TRONG KHUÔN KHỔ WTO

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Tóm tắt

Bài viết đi sâu vào khía cạnh lý thuyết và thực tiễn của việc giải quyết tranh chấp chống bán phá giá trong khuôn khổ Tổ chức Thương mại Thế giới (WTO), cũng như nghiên cứu và phân tích về vấn đề này. Với khoảng 20% thành viên WTO tham gia, thực tiễn giải quyết tranh chấp chống bán phá giá tại WTO không chỉ cho thấy sự gia tăng về số lượng mà còn thể hiện sự phức tạp của các tranh chấp chống bán phá giá. Thực tiễn giải quyết các tranh chấp chống bán phá giá tại WTO đã chứng minh rằng chủ yếu là các thành viên phát triển hoặc một số thành viên đang phát triển có tiềm lực kinh tế mạnh mới có thể theo đuổi cả một qui trình giải quyết tranh chấp kéo dài của WTO.

Từ khóa: Chống bán phá giá, Cơ chế giải quyết tranh chấp (DSM), Tổ chức Thương mại Thế giới (WTO).

PRACTICE OF DISPUTE SETTLEMENT AT THE WTO ON ANTI-DUMPING

Abstract

The article delves into the theoretical and practical aspects of anti-dumping dispute settlement within the World Trade Organization (WTO) framework by implementing research and analysis to take a deeper into it. With about 20% of WTO members participating up to now, the practice of settling anti-dumping disputes at the WTO shows not only an increase in the number, but also in the level of complexity of anti-dumping disputes. The practice of resolving anti-BPG disputes at the WTO has demonstrated that only a few developing members, if any, have the economic capacity to pursue a lengthy WTO dispute resolution process.

Key words: Anti-dumping, Dispute Settlement Mechanism (DSM), WTO framework.

1. Introduction

Anti-dumping disputes are becoming increasingly complicated and popular in today's international trade as more countries, primarily developed countries, impose anti-dumping measures. By definition, anti-dumping measures are both as a trade barrier and a form of domestic industry protection. Between January 1st, 1995, and December 31st, 2020, 6300 new anti-dumping investigations were launched, with 4071 anti-dumping measures implemented by WTO members. Anti-dumping investigations and the following measures imposed by WTO members, consequently, have become even more complex and challenging to manage.

More than one hundred WTO members had a legal framework for anti-dumping investigations by the end of December 2020, while more than half of them executed anti-dumping investigations each year. WTO members have proactively used appropriate mechanisms to protect their legitimate rights and interests in the face of the aforementioned situation. The DSM of the WTO is currently one of the most effective. However, there are several flaws in the WTO's DSM and the resolution of anti-dumping disputes that must be addressed.

As a result, I decided to choose the topic and title "Practice of WTO Dispute Settlement on Anti-dumping" for my paper.

2. A brief overview of the practice of dispute settlement at the WTO on anti-dumping

2.1. Overview of Dispute Settlement Mechanism (DSM) at the WTO

a. Objectives of the DSM

The Dispute Settlement Mechanism in the WTO is the successor to the provisions on dispute settlement that have had a positive effect over the past 50 years in the history of GATT 1947. Learning from the inadequacies in the old mechanism, a number of fundamental improvements to the procedure have been incorporated into the new mechanism, significantly contributing to enhancing the adjudicative nature of this procedure as well as enhancing the binding of dispute settlement decisions.

The fundamental objective of the DSM in the WTO is to “achieve a positive solution to the dispute”, and to give priority to “solutions mutually agreed upon by the disputing parties and in accordance with the Agreements”. On a broader scale, this mechanism is intended to provide multilateral dispute settlement procedures as an alternative to unilateral actions by member states, which pose many risks of injustice, stagnation and disturbance mixing the common operation of international trade rules.

b. Legal framework and sources

On the basis of the discrete provisions on dispute settlement in GATT, the WTO has succeeded in establishing a complete and detailed legal mechanism in a unified document to settle commercial disputes among WTO members (including sovereign states and separate customs territories):

- Agreement on Rules and Procedures Governing Dispute Settlement (DSU)
- Appendix 2 to the Marrakesh Agreement establishing the WTO.

In addition, this mechanism is also included in a number of separate provisions in other documents (referred to by DSU) such as:

- Articles XXII and XXIII of GATT 1947 (Article 3.1 DSU)
- Specific or additional rules and procedures for dispute settlement in WTO Agreements (Example: Article 11.2 of the Agreement on Phytosanitary Measures; Articles 17.4 to 17.7 of GATT 1994...)

"Decision on Special Dispute Settlement Procedures" GATT 1966: includes rules applicable to the settlement of disputes between a least developed country and a developed country (Article 3.12 of the DSU) and special procedures applicable to disputes involving a least developed country party (Article 2.4 DSU).

This WTO's DSM is obligatory for all member countries whereby each member has a complaint or dispute with another member and is forced to bring the dispute to settlement by this mechanism. The Member State complained against has no other option but to accept participation in the settlement of the dispute under the procedures of this mechanism. This is the point that makes the difference as well as the operational efficiency of the dispute settlement mechanism in the WTO compared to existing international dispute settlement mechanisms (the settlement competence of the traditional mechanisms not mandatory but subject to the approval of the countries concerned).

c. Dispute Settlement Authorities

Dispute Settlement Body (DSB): This body is essentially the WTO General Assembly, consisting of representatives of all member states. The DSB has the power to establish panels, adopt panel and Appellate Body reports, monitor the implementation of decisions, recommend dispute settlement, and authorize suspension of obligations. and make concessions (retaliation). However, the DSB is only a decision-making body, not directly conducting the dispute settlement review.

Panels: This panel consists of three to five members whose task is to consider a particular matter in dispute on the basis of WTO rules invoked by the complaining country. The outcome of the Panel's work is a report to be submitted to the DSB for adoption, which enables the DSB to make recommendations to the disputing Parties. In fact, this is the body that directly resolves disputes, although it does not hold decision-making power (because with the principle of veto consensus, all dispute resolution issues that have been brought before the DSB are "automatically" adopted).

The Appellate Body (SAB): The Appellate Body is a new body in the WTO dispute settlement mechanism, allowing panel reports to be reviewed (when required), ensuring the correctness of dispute settlement reports. The establishment of this body also shows more clearly the adjudicative nature of the new dispute settlement procedure.

2.2. Current situation of anti-dumping disputes at the WTO

Throwing back to 25 years ago since the first case of anti-dumping dispute between Mexico and Venezuela (DS23) [1] over some oil country tubular goods (OCTG) imported from Mexico, it can be concluded that there are no specific or common characteristics of product types or countries which have been or will be involved in anti-dumping disputes. However, over the last 25 year period of resolving international trade disputes in general and anti-dumping disputes in particular,

the WTO has partially met its members' demands for a clear DSM in a timely and effective manner with several noticeable statistics as follow:

Regarding total cases, the WTO has settled a total of 137 anti-dumping cases during this time period, making it the most common type of dispute in the WTO system. Nearly six hundreds of consultation requests in total were sent to WTO members from 1995 to 2020 [14]. In the five most recent years, 2018 was the year having the most cases (38 cases) and the number of disputes tended to decrease considerably since then, with only 5 in 2020.

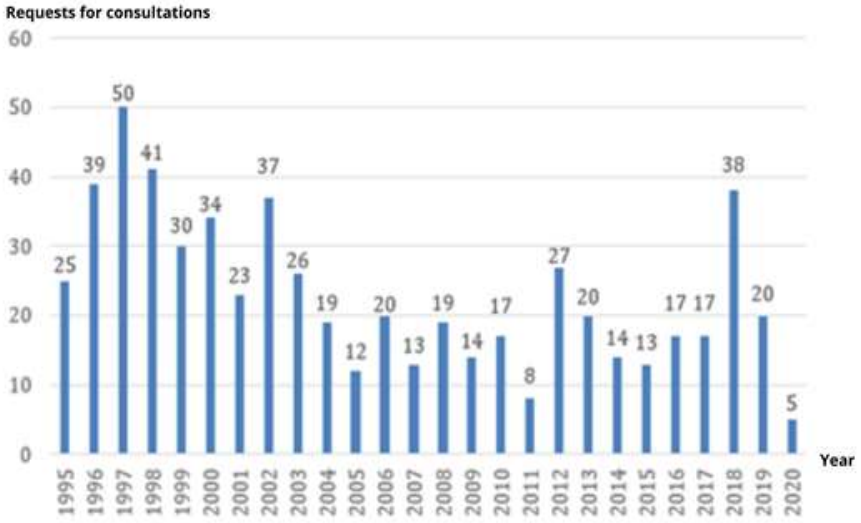

Figure 1. Requests for consultations (1995 – 2020)

Source: World Trade Organization

Regarding products involved in disputes, anti-dumping disputes within the WTO framework mainly involve steel, seafood, mobile phones, footwear, textiles, pharmaceuticals, and other commodity groups.

Regarding nations involved in disputes, the level of participation of developed and developing WTO members as anti-dumping complainants and respondents differs significantly. Members of the development team predominantly play the role of respondent, while those from the development team often take the complainant side. Among those, the United States is the leading country in the number of disputing cases with 54 totally (7 times as a plaintiff and 47 times as a defendant).

Regarding specific matters of disputes and lawsuit, anti-dumping disputes are mainly principles-related issues (Article 1 with 85 cases); determination of dumping (Article 2 with 49 cases, 57 disputes about the comparison between export price and normal value under Article 2.4); evidence issue (Article 3 with 41 cases); and the best information issue (Article 4 with 41 cases). Article 9 on anti-dumping duty taxation and collection was used in 31 cases, followed by Article 7 on provisional measures in 14 cases, and then Article 8 on the new price commitment measure in four cases.

As a result, several observations can be drawn out from the current remarks of resolving anti-dumping duty issues within the WTO including:

First, anti-dumping disputes are by far the most common type of WTO dispute to be resolved. This is due in part to countries' growing application of anti-dumping measures as a tool for protecting local industries. As long as there are a lot of anti-dumping cases, there will be a lot of conflicts which will get more complicated accordingly.

Second, the most common type of WTO anti-dumping dispute is around the official anti-dumping duty. The following are the realizable reasons for this: (i) By nature, provisional measures have limited impact due to their temporary validation and short-term application only within the investigation period; (ii) The exporter has to agree on the price commitment measure, which should be voluntary, but in practice, only a few companies are able to use this metric; (iii) Because most members strive to ensure that their national laws are compatible with WTO law, disputes resulting from other legal reasons like inconsistencies between a member's legal provisions and the Anti-Dumping Agreement (ADA) content become less common; (iv) Anti-dumping duties, in the meantime, are approved by the competent authorities and valid in the long run, which will definitely cause real barrier and challenges towards import products.

Third, in terms of products involved in the disputes and subsequent lawsuits, they primarily belong to the developing country members' export product groups that have competitive advantage and strengths over the others'.

Fourth, under the Advisory Centre on WTO Law's advice and assistance, several developing country members are becoming more active and enthusiastic in participating in resolving anti-dumping disputes, inferring a sharp increase in their faith in the WTO's DSM and their self-confidence. Indeed, many cases have been documented since 1995 in which developing members have emerged victorious. For instance, DS58 [2]: United States — Anti-dumping Measures on certain Shrimp from Vietnam (Thailand), DS404 [7]: United States – Imported Shrimp (Vietnam), DS345 [5]: United States — Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, and so on. That active participation is worth encouraging as it helps narrow down the discrepancy between the developed and these developing members. However, the majority of developing members at the WTO still do not or only partially participate in the settlement of international trade disputes, particularly anti-dumping disputes, perhaps due to the lack of financial and human resources to pursue lawsuits, the lack of experience in dispute resolution, and so on.

2.2. Some remarks drawn from the practice of settling disputes on anti-dumping within the WTO framework

The following observations can be made about the practice of resolving anti-dumping duty issues within the WTO system:

To begin with, anti-dumping disputes are by far the most common type of WTO dispute to be resolved. This is due in part to countries' increased use of anti-dumping measures as a tool for protecting local industries. As long as there are a lot of anti-dumping cases, there will be a lot of conflicts, and they'll get more complicated.

Second, the most common type of WTO anti-dumping dispute is formal anti-dumping duty disputes. The following are the main reasons for this: (i) Provisional measures have limited impact due to their temporary nature; the exporter must agree to the price commitment measure, which is voluntary. In practice, only a few companies are able to use this metric. Because most members

strive to ensure that their national laws are compatible with WTO law, inconsistencies between a member's legal provisions and the Anti-Dumping Agreement (ADA) content are uncommon. Anti-dumping duties, in the meantime, are approved by the competent authority and can last for a long time; (ii) While the WTO allows lawsuits in all four types of disputes, members typically wait until the anti-dumping investigation is completed before filing one.

Third, in terms of product groups, developing country members' strengths are primarily export products.

Fourth, the practice of resolving anti-dumping disputes demonstrates that some developing members are becoming more active. This shows that they have more faith in the WTO DSM and developing country members. Indeed, many cases have been documented since 1995 in which developing members have emerged victorious. For instance, DS58 [2]: United States — Anti-dumping Measures on Certain Shrimp from Vietnam (Thailand), DS404 [7]: United States – Imported Shrimp (Vietnam), DS345: United States — Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties, and so on. The active participation of developing countries in resolving international trade disputes at the WTO, particularly anti-dumping disputes, is encouraging. The divide between some developing and developed members has narrowed. The Advisory Centre on WTO Law's advice and assistance has helped a lot of new members.

Fifth, with the exception of a few active developing members, many other developing countries do not or only partially participate in the settlement of international trade disputes, particularly anti-dumping disputes, at the WTO. This situation is due to a variety of factors, including a lack of financial and human resources to pursue lawsuits, a lack of experience in dispute resolution, and so on. Developing countries must, however, improve their ability to resolve international trade disputes with the WTO and other members. One of the key recommendations is for these countries to actively learn from other developing members who have successfully implemented the WTO's DSM.

2.3. Current situation resolving anti-dumping disputes by stages in the Dispute Settlement Mechanism proceedings

a. Dispute resolution at consultation stage

There were 47 anti-dumping disputes still in the consultation stage as of December 31, 2020. The practice of dispute settlement at the WTO has indicated that the majority of international trade disputes in general and anti-dumping cases in particular are resolved without going beyond the consultation phase, including sometimes that the two parties have reached a settlement to their dispute. Consultation, undoubtedly, is still an effective method for resolving WTO disputes by which the parties can achieve their goals without using enforcement or monitoring tools.

Cases involving anti-dumping disputes are still in the consultation stage, and typically fall into one of the following categories: (i) The case was just filed recently and is still within the consultation period; and (ii) The complaining party, for some reasons, has decided to drop the case. According to the Dispute Settlement Body (DSB), the dispute will only end at the consultation stage unless the disputing parties notify of successful consultation results, withdraw their consultation request, or the issue is resolved through other means.

There are various reasons why the complainant stops and does not continue to submit a request to create a panel to carry the dispute settlement to the next step of the panel, based on the practice of resolving anti-dumping disputes at the consultation stage:

The complaining party may decide to abandon a specific lawsuit in favor of pursuing a different case that addresses the same issue and object in the hope that the later case will have higher possibilities for them to win. Or in the second case, the complaining party is not fully prepared and ready to pursue the lawsuit, both financially and emotionally, so they discover that they "lose" more than they "gain."Last but not least, the defendant may have corrected and stopped the infringement, in which case the complainant has achieved his or her goal and no longer wishes to pursue it. Indonesia, for example, retracted its consultation request after South Africa amended DS374 concerning anti-dumping measures for uncoated chemical paper products.. As a result, the complainant was able to save time, apply "pressure" to the respondent, and avoid a protracted legal battle.

b. Settlement of disputes at the panel stage

There were 23 anti-dumping panel cases by the end of 2020, among which no cases the panel report was circulated; 4 cases the panel report was appealed; 4 case report(s) were adopted with no further action required; 5 case report(s) were adopted with a recommendation to bring measure(s) into compliance; 2 cases the panel's authority lapsed.

DS420, DS474 and DS598 are three examples of requests for panel composition that have been made but not yet completed. The authority for the panel has lapsed in three cases: DS516, DS355, and DS282. The authority to establish the Panel lapsed because the panel had not been asked to resume its work, as required by Article 12.12 of the DSU.

More than half of the time, the Panel Report was adopted with recommendations to bring measure(s) into conformity in five of the nine cases (DS241, DS337, DS382, DS404, DS425).

A number of conclusions can be drawn out from the outcomes of cases:

First, the complaining party can initiate the case, seek consultations, suspend, and re-initiate the panel stage dispute resolution procedure under Article 12.12 of the DSU. In reality, some complainants have taken advantage of this provision to lead the lawsuit following the “script” they want.

Second, most international trade disputes, especially anti-dumping cases at the WTO, it is difficult for the parties to reach consensus on the selection of panel composition. Although the DSU provides that disputing parties may not object to the nominations of the WTO Secretariat unless there are compelling reasons, it is common practice for the parties to initially object to the nominations without giving many statements or arguments. In practice, panel selection is often a very challenging and complex process that can take even weeks. In addition, the time limit for adjudicating most anti-dumping disputes at the WTO is longer than that prescribed by the DSU, so the disputing parties need to be well equipped with finance, personnel and other conditions in case they want to pursue it to the end.

c. Settlement of disputes at the appeal and appellate stage

As of December 31, 2020, 19 anti-dumping disputes had been resolved at the appeal and appellate stages, with three cases adopting the Appellate Body (AB)'s Report with no further action

required and 16 cases adopting the AB's Report with a recommendation to bring measure(s) into compliance.

The United States leads WTO members in terms of appeal and appellate stage participation (2 cases as complainant, 5 cases as respondent), followed by China (2 cases as complainant, 3 cases as respondent), Japan (four cases as plaintiffs), and the European Union (four cases as plaintiffs) (2 cases as complainant, 2 cases as respondents)

Only developed countries or some developing countries with significant economic potential can pursue and engage in further dispute resolution at the appeal and appellate stages. In the majority of anti-dumping cases, AB orders the losing party to comply with WTO rules. Anti-dumping complaints can be filed with the DSB by complainants, including WTO members from developing countries, and won with careful research and preparation. Besides, the main appellants were the defendants, accounting for 07/08 cases, only the DS244 case, the United States was the defendant, but the Panel Report was in favor of the US, therefore, the US did not appeal.

d. Implementation of the decision of the Dispute Settlement Body

There were 28 anti-dumping disputes at the stage of implementation of the DSB's decision dating to beginning the year 2021, of which 20 cases had been notified by the respondent; 3 cases had been notified of a mutually acceptable solution on implementation; no cases had been completed without a finding of non-compliance; and 4 cases had been completed with a finding of non-compliance.

In general, for anti-dumping disputes that have been settled at the WTO, if they do not stop at the consultation stage or are resolved by other methods, the majority of that, more or less, the complaining parties won. However, the implementation of the DSB's decision has been relatively slow in practice. Losing parties often find ways to delay and prolong the implementation of the DSB's decision, while the list of winners who have requested retaliatory measures is usually only developed members. Obviously, the mechanism to ensure the implementation of decisions of the DSB within the WTO framework always has shortcomings that need to be improved.

2.4. Practice of Anti-dumping Dispute Settlement by Case

According to the mentioned statistics, there have been hundreds of disputing cases with regard to international trade and particularly, anti-dumping issues. When investigating the practice of resolving real cases, however, DS404 is the first and most recent anti-dumping dispute that our country - Vietnam initiated at the WTO, which will be taken into consideration.

In summary, on February 1, 2010, the Government of Vietnam sent a request for consultation to the US Government regarding anti-dumping measures for frozen warm water shrimp products imported from Vietnam. The parties involved include Vietnam as plaintiff, the United States as defendant, and third parties consisting of the EU, Japan, Korea, Mexico, Thailand, China, India. More specifically, Vietnam complained that the following measures of USDOC were in violation of WTO regulations: (i) Using the Zeroing method in calculating the dumping margin; (ii) Limit the number of defendants selected for investigation in the initial investigation and administrative review; (iii) The method of determining the tax rate applicable to the defendants voluntarily not selected in the investigation at the 2nd and 3rd administrative reviews; and finally, (iv) The method of determining the national power level based on available information causes disadvantages for

Vietnamese enterprises that cannot prove their independence in production and business activities with the State.

The result, on the date July 11th 2011, turned out that the panel announced Vietnam to win the case and required the US to adjust related measures to be suitable in accordance with WTO regulations.

Accordingly, there are some comments particularly for this case, then inferring to the DSM within the WTO concerning anti-dumping disputes, can be gathered as follow:

For the problem of Zeroing: The Zeroing method is to separate each transaction and only take those transactions with a positive margin to calculate the dumping volume. Transactions with a negative margin of dumping are considered non-dumping and are not included in the overall dumping volume. This approach is called "reducing to zero" and is a highly-controversial topic in international anti-trafficking practice. Not only are there more disadvantages for exporters, the method of reducing to zero is also not convincing about fairness because it will falsify not only the dumping margin but also the conclusion that there exists dumping or not.

With the application of an unreasonable calculation through the Zeroing method, the DOC concluded that Vietnam was dumping on February 1st, 2005 and issued an order to impose anti-dumping tax on Vietnamese shrimp exporters: Minh Phu Seafood Company (4.21%), Minh Hai Seafood Processing Joint Stock Company (4.13%), Ca Mau Frozen Seafood Import-Export and Processing Corporation (4.99%) are three compulsory defendant enterprises of Vietnam in the lawsuit.

The decision of the DOC on the final tax rate to apply the second administrative review is unfair and has put Vietnamese import-export enterprises in a very difficult situation because Vietnamese enterprises selected by the DOC to regulate separate tax rates (Minh Phu and Camimex) have negligible tax rates (rounded to zero). Although they have applied for a tax rate review, enterprises that are voluntary defendants of Vietnam are not considered by the DOC to calculate their own tax rates and are not entitled to the zero tax rate when the tax rate calculated for all defendants is required to be zero or insignificant.

Before the ADA 1994 was issued, the WTO did not have specific regulations on the issue of "reducing to zero". Therefore, this calculation is still widely applied by developed countries such as the EU and the US to protect domestic industries. However, when the WTO's ADA 1994 was issued, the zero calculation method was understood as not allowed to be applied in the calculation of the dumping margin. The WTO has expressed this position very clearly in its case precedents, for example in the Bed linen case and the US-Lumber V case in 2004.

Consequently, the Appellate Body concluded that the calculation of the sales margin of dumping combined with the zero reduction method violated the requirement regarding fair comparison in Article 2.4 of the ADA. Therefore, there is no need to conclude that this method violates any other WTO provision to assist in dispute settlement or award enforcement. This conclusion of the Panel is consistent with the conclusions of many previous WTO disputes on similar issues, ensuring fairness in the application of WTO laws and creating a healthy business environment for enterprises.

3. Evaluation and recommendations

From the investigation, observation and analysis above, several conclusions in respect of strengths and weaknesses of the DSM within the WTO framework toward anti-dumping disputes can be made as the result of this paper including:

3.1. Strengths

The practice of DSM in the WTO for international trade disputes in general, and for anti-dumping disputes in particular, as described above has a number of major advantages over the conventional dispute settlement methods in international law and is more advanced in relation to the dispute settlement procedure in GATT, the predecessor of the WTO:

First, the settlement is conducted carefully, through two steps by neutral bodies (Panel, Appellate Body), ensuring the correct resolution of disputes. This is the first time in an international dispute settlement arbitration mechanism that an Appellate Body has appeared with the opportunity to review the original decision, ensuring the interests of the parties to the dispute.

Second, this mechanism is conducted according to a strict process with short, defined deadlines. This allows disputes to be resolved quickly and in a timely manner, ensuring the meaning of the solutions offered to the parties, especially the winning party (because a commercial opportunity may not exist anymore meaning if the remedy is given too late).

Third, the DSB's automatic approval mechanism (negative consensus) allows easier approval of reports. This mechanism is really meaningful in cases where the party considered to have violated the rule is a country with strong economic potential because the pressure that these countries can create during the decision-making process will be not as big as before.

Fourth, this mechanism allows for a final solution to the dispute, ensures the interests of the violated Party, and avoids insurmountable deadlocks in diplomatic settlement methods (e.g. consultations in the Trade Council).

Fifth, DSU has many provisions on procedures specific to developing or less developed countries, creating favorable conditions for these countries when participating in dispute settlement procedures to protect their legitimate interests mine.

3.2. Weaknesses

The anti-dumping DSM within the WTO, however, through the application process from 1995 up to now, has also revealed certain disadvantages, especially for developing countries, such as:

First, the negative consensus approach means that most of the reports (either by the Panel or by the Appellate Body) are adopted in the DSB. This leads to a situation where recommendations are much easier to adopt but less enforceable.

Second, in principle, if the offending party does not voluntarily implement the recommendations of the DSB, the other party can ask the DSB for permission to take retaliatory measures. However, retaliatory measures may not be meaningful or effective if the retaliatory country is a developing country.

Third, many of the provisions that are considered “priority” for developing countries in the WTO dispute settlement mechanism have a very vague meaning in practice: there are provisions that are more declarative than regulatory practice (e.g. a provision on the obligation of the disputing Parties to “pay special attention” to the interests of developing countries: the meaning

of the term “particular attention” is neither clearly defined nor clearly identified in panel or appellate body reports); provisions are in fact very ineffective (e.g. the WTO Secretariat's legal aid responsibilities are in practice carried out by a small number of individuals, unable to meet the enormous need for legal aid of developing countries that are members of the WTO).

Fourth, the DSM in the WTO tends to favor technical and legal factors, requiring the participating parties to have a team of experienced legal and economic experts. For developing countries, this is really a big obstacle. Experience shows that developing countries, when participating in commercial dispute settlement proceedings within the WTO framework, have to hire foreign lawyers, legal consultants and experts at costs that are not reasonable enough for any country to accept it.

From international trade perspectives, despite the above disadvantages, using the DSM in the WTO is still the most effective way for member countries to resolve disputes, especially the anti-dumping disputes within the framework of this organization, and protect their legal and economic interests. The WTO members, especially the developing countries, therefore, should be aware of the current practice, as well as both strengths and weaknesses of the organization’s DSM to be well-prepared and equipped, improve national capabilities, avoid shortcomings and take advantage of the mechanism to gain victory when the international trade and even anti-dumping disputes take place.

4. Conclusion

The WTO's DSM has been in operation for 26 years since January 1st, 1995.

During that period of years, the practice of settling anti-dumping disputes at the WTO not only demonstrated an increase in the number but also the complexity of anti-dumping issues in particular with the participation of about 20% of the respondents of the WTO.

The WTO has been trying to improve the legal system to resolve anti-dumping disputes more actively, and achieve the goal of creating a positive and efficient solution to disputes. Undeniably, the WTO has achieved some success in conducting cautious dispute settlement, determined time, automatic approval mechanism, final solution, and procedures to assist less developing countries. However, the WTO's DSM also needs to overcome some shortcomings in terms of fairness, favoritism for developed countries and costs to pursue till the end.

Developing countries in general and Vietnam in particular are still the low-level developing group of the WTO. With limitations in terms of economic conditions, human resources and experience, these countries will certainly face more obstacles when participating in the DSM, especially with complicated disputes such as the anti-dumping disputes. This working paper, therefore, aims to provide theoretical knowledge, updates and analysis on the current status of anti-dumping dispute settlement within the WTO framework. On the basis of such understanding, developing countries including Vietnam should have reasonable planning strategies and solutions in effectively using the WTO's DSM to protect legitimate rights and interests of the country and domestic enterprises in the international trade market.

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WTO. DS345: United States — Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties.

WTO. DS374: South Africa — Anti-Dumping Measures on Uncoated Woodfree Paper.

WTO. DS404: United States — Anti-dumping Measures on Certain Shrimp from Viet Nam.

WTO. DS420: United States — Anti-dumping measures on corrosion-resistant carbon steel flat products from Korea.

WTO. DS474: European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia.

WTO. DS536: United States — Anti-Dumping Measures on Fish Fillets from VietNam.

WTO. DS58: United States — Import Prohibition of Certain Shrimp and Shrimp Products.

WTO. DS598: China - Anti-dumping and countervailing duty measures on barley from Australia.