



www.cat-e.org

Report on Trade, Environment, and the WTO Dispute Settlement Mechanism

Author: Richard Tarasofsky, Chatham House

Reviewer: Tom Verbeke, CEEM, Gent

Date: June 2005

Concerted Action on Trade and Environment, sponsored by the European Commission,
Research Directorate-General, under Contract No. EVK2-CT-2002-20017 CAT&E

Preface



The Concerted Action on Trade and Environment (CAT&E) is designed to provide an opportunity for the large and growing community of European researchers working on trade and environment issues to meet regularly, to discuss research hypotheses and methods, to review results, and to develop new lines of co-operative research. CAT&E will launch a dialogue with policy makers at all levels. It aims to create a process that can document the progress of research and generate new research impulses in this area. It seeks to advance the resolution of current conflicts between trade and environment.

The information obtained in the course of the Concerted Action is annually summarised in state of the art reports and bibliographies in a fashion that is useful to both researchers and policy makers. These reports serve as an input to CAT&E's annual members' meetings and open conferences. To structure the reporting and discussions, the following themes have been identified initially (in random order; the theme of the present paper is underlined):

- ✓ Subsidies
- ✓ Government Procurement
- ✓ Investment
- ✓ TBT, SPS, and Labelling
- ✓ Trade and Development
- ✓ Trade, Environment and Human Rights
- ✓ Trade in Commodities
- ✓ Implementation Procedures
- ✓ Trade in Services
- ✓ Intellectual Property Rights
- ✓ Trade and Multilateral Environmental Agreements
- ✓ Dispute Settlement
- ✓ Transparency and Participation
- ✓ Sustainability Assessment of Trade Agreements
- ✓ European Trade Policy Development
- ✓ Trade and Agriculture
- ✓ Trade, Environment and Labour
- ✓ Trade, Environment, and Public Health
- ✓ Science and Precaution
- ✓ Trade and Environment in the Architecture of International Governance.

Table of Contents

1	Introduction and scope of the paper	4
2	Identification of relevant research hypotheses	5
2.1	Legal issues relating to the WTO.....	5
2.1.1	The WTO now interprets GATT rules so as to allow countries sufficient space to pursue many trade-related environmental policies	5
2.1.2	WTO law does not adequately address the role of other relevant rules of international law in adjudicating dispute on trade and environment.....	6
2.2	The institutional aspects of the WTO dispute settlement mechanism	6
2.2.1	The WTO dispute settlement mechanism is not structured appropriately to address environmental disputes	7
2.2.2	WTO dispute settlement body is not the appropriate forum to address environmental disputes.....	8
2.2.3	Many trade and environment disputes lend themselves to non-judicial alternative dispute resolution mechanisms.....	9
3	Survey of methodological approaches	10
4	Conclusions	10
5	Literature	10
6	WTO Member Submissions on the Dispute Settlement Review	14

1 Introduction and scope of the paper

Disputes between States lie at the core of the debate over the interface between trade liberalisation and environmental protection. Given the explosive growth of environmental policy over the last three decades, such that it impacts increasingly on economic policy, it is perhaps not surprising those trade disputes over environmental resources have risen in prominence during that time. Indeed, the first case heard by the new WTO DSB involved an environmental dispute.¹

This paper explores the state of the art of research on international dispute settlement on trade and environment. The bulk of the research to date focuses on the World Trade Organization (WTO), which is virtually the only international judicial body that has considered trade and environment disputes. Notwithstanding this limitation, the paper will also briefly explore other potential avenues of research.

At the heart of the WTO system is perhaps the strongest inter-State judicial dispute settlement mechanism in existence, which seeks to be an effective guardian of the rules-based system that underpins the WTO. Indeed, the evolution of dispute settlement in international trade, from the early days of the GATT to the present Dispute Settlement Body (DSB), reflects an increasing movement away from a power-based system, to one that is virtually entirely rules-based. While previous dispute settlement mechanisms in the GATT were relatively inefficient and subject to considerable political oversight, the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) contains the following features:

- A request by one Member to establish a panel is complied with unless there is a consensus not to do so, i.e. compulsory jurisdiction.²
- The WTO Director General selects panelists if the disputants do not agree.³
- A specific timetable for the panel process is provided for which, barring unforeseen developments.⁴
- Adoption of the panel report unless there is a consensus not to, or one of the disputants launches an appeal
- Establishment of an Appellate Body, which is an independent body that examines questions of law. Its reports are adopted, unless there is a consensus not to.⁵
- WTO-incompatible measures are to be removed or else the complainant may seek compensation or suspend concessions vis-à-vis the Member in violation.⁶

¹ WT/DS2/AB/R, 26 April 1996.

² Article 6.

³ Article 8.

⁴ Article 20 and Appendix III.

⁵ Article 16.

⁶ Articles 21 and 22.

Although this system is not without imperfections, it stands in sharp contrast to dispute settlement mechanisms in MEAs, which tend not to be used. It is precisely because of the power of the WTO dispute settlement system, and its potential to impact directly on the economic interests of disputants, and thereby a country's overall policy landscape, that the environmental community has particularly scrutinized developments in the WTO DSB. The current phase of the trade and environment debate began with the notorious GATT Panel rulings in the Tuna Dolphin cases,⁷ which both outraged many environmentalists and caused them to fear the potential of the GATT/WTO to undermine environmental regulations. WTO jurisprudence has indeed developed since then, and indicates just how important the DSB is, by establishing authoritative interpretations (even to the point of reversing previous doctrines), which in some ways go well beyond what has been feasible to achieve at the political level.

2 Identification of relevant research hypotheses

The following are a set of hypotheses, derived from current policy discussions, that merit further research. The first set of hypotheses is related to legal aspects within the WTO, whereas the second set focuses on the institutional aspects.

2.1 Legal issues relating to the WTO

2.1.1 The WTO now interprets GATT rules so as to allow countries sufficient space to pursue many trade-related environmental policies

Recent GATT jurisprudence, in particular the Shrimp Turtle Implementation case,⁸ appears to widen the scope in which WTO Members can apply trade-related measures for environmental purposes. This is illustrative of an approach by the WTO Appellate Body to interpret GATT provisions in a more textually accurate fashion, in reference to general rules of treaty interpretation.⁹ Examples of some are these (re-) interpretations of GATT jurisprudence is the reversal of the "primarily aimed at" test in Article XX(g),¹⁰ the broadening of the "necessity" test in Article XX(b), so as to include the public interest and consumer preferences,¹¹ and placing the bulk of the analysis within the chapeau of Article XX.¹² These decisions have been informed to a large extent by the Vienna Convention on the Law of Treaties, as well as the use of evolutive interpretation.

⁷ WT/DS21/R-39S/155, 3 September 1991; WT/DS29/R, 16 June 1994.

⁸ WT/DS58/AB/R, 12 October 1998.

⁹ G. Marceau 1999: A Call for Coherence in International Law -- Raises for the Prohibition Against the "Clinical Isolation" in WTO Dispute Settlement, 33 *Journal of World Trade*, Vol. 33, Issue 5, p. 87-152.

¹⁰ See, e.g., *Op. cit.*, footnote 8.

¹¹ WT/DS/AB/R, 12 March 2001.

¹² *Op. cit.*, footnote 1.

The basis for this hypothesis is a series of rulings over the last five years. However, it remains to be seen whether this jurisprudential trend continues, given that there is no formal *stare decisis* in the WTO. In addition, further research would appear to be required in order to support the further development of the Article XX tests, so as to incorporate key tenets of environmental policy, such as the precautionary principle. Furthermore, the possibility of "non-violation complaints" involving the environment,¹³ although so far never argued before any WTO panel, might create a situation where the application of environmental measures might lead to trade sanctions, even in the absence of a violation of the GATT.

2.1.2 WTO law does not adequately address the role of other relevant rules of international law in adjudicating dispute on trade and environment

According to Article 3.2 of the Dispute Settlement Understanding, the WTO agreements are to be interpreted in light of customary rules of interpretation. On this basis, the Appellate Body has confirmed that WTO rules must not be interpreted in clinical isolation of public international law. In addition, reference can be made to Article 31(3)(c) of the Vienna Convention on the Law of Treaties, which calls for treaties to be interpreted in accordance with any relevant rules of international law applicable in the relations between the parties. This provision has an important bearing on trade and environment disputes, whereby environmental rules might have a basis in treaty were customary international law. In addition, the references to environment and sustainable development in the WTO Agreements might also provide entry points for the other rules of international law.¹⁴ Furthermore, the WTO DSB has recently undertaken its own legal interpretation of a standard set by a non-WTO instrument.¹⁵

On the other hand, the WTO dispute settlement mechanism is not meant to be a court of general jurisdiction.¹⁶ It will not be credible to extend the WTO's power over matters that are clearly outside the remit of trade policy. Indeed, one of the objectives of the environmental policy community is to ensure that MEAs and other environmental institutions retain sufficient ownership of applicable disputes.

Finding the most appropriate balance is a complex challenge, and likely entails a case-by-case approach for determining what the applicable law is. This is an area that requires further monitoring of the jurisprudence, as well as increased research.

2.2 The institutional aspects of the WTO dispute settlement mechanism

¹³ GATT Article XXIII:1(b).

¹⁴ E.g., Preamble to the Agreements Establishing the World Trade Organization.

¹⁵ WT/DS231/AB/R, 26 September 2002.

¹⁶ G. Marceau, *op. cit.*, footnote 9.

2.2.1 The WTO dispute settlement mechanism is not structured appropriately to address environmental disputes

There are several factors relevant to this hypothesis. The first is that the panels and the Appellate Body do not have inherent expertise to evaluate and assess environmental measures. Membership in these bodies tends to be made up of trade lawyers, and the WTO secretariat has little environmental expertise to contribute in support. However, the DSB does provide the panel with the ability to call on outside expertise as needed.¹⁷ In several cases, outside experts testified over technical issues relevant to the dispute,¹⁸ including issues relating to the environment.¹⁹

Related to this is the wider issue of transparency, which is a central feature in environmental policy making. The argument is that without this transparency, the process will not be linked sufficiently to the interests of environmental stakeholders, and these stakeholders will not be able to input their views and expertise into the process. At present, DSB meetings are closed to outside observers from civil society (see CAT&E paper on transparency). This is in contrast to the normal procedures in most public international dispute settlement processes.²⁰

One key component of transparency is the entitlement of civil society to submit *amicus curae* briefs, which so far is not absolute. This subject has proven controversial among WTO Members, with the United States, the European Union and Canada pressing for this, while many developing countries being opposed. However, despite the divisions among Members, the WTO Appellate Body has interpreted its authority so as to permit *amicus curae* briefs to be submitted, despite the absence of any express allowance to do so in the WTO Dispute Settlement Understanding. It has also established a procedure in 2000, with criteria, for accepting *amicus curae* briefs. In the recent *Sardines* decision, the Appellate Body permitted a WTO Member to submit an *amicus curae* brief, even though that Member would have been entitled to intervene on the basis of the established rules in the DSU.

Finally, the terms of reference for the disputes do not necessarily lend themselves to ensure that environmental measures are assessed in a manner that adequately considers the environmental rationale, as their focus is on the WTO Agreements.²¹ The DSB provides that the parties are to agree amongst themselves on the terms of reference for the panel,²² but that if they are unable to do so, then a set of standard terms of reference are to be applied.²³ However, it must also be noted that both the DSB, and the Appellate Body, have consistently affirmed that the WTO rules are to be interpreted in accordance with the customary principles

¹⁷ Article 13; Appendix 4 of DSU.

¹⁸ E.g., *op. cit.*, footnote 11 and WT/DS26/AB/R, WT/DS48/AB/R, 16 January 1998, as well as WT/DS161/AB/R, WT/DS169/AB/R, 11 December 2000.

¹⁹ *Op. cit.*, footnote 8.

²⁰ E.g. International Court of Justice, whose proceedings are generally open to the public.

²¹ Article 7(1).

²² Article 7.

²³ *Ibid.*

of international law,²⁴ which can require consideration of applicable international environmental law.

2.2.2 WTO dispute settlement body is not the appropriate forum to address environmental disputes

This hypothesis arises particularly in the context of disputes involving specific obligations contained in multilateral environmental agreements (MEAs), which is an item on the Doha Mandate.²⁵ A major part of the debate on WTO/MEAs concerns dispute settlement; i.e. if a dispute involves obligations from both the WTO and MEA, what procedural and substantive modalities should be applied? Current proposals in the WTO by some countries,²⁶ called for the establishment of specific rules and thresholds to handle disputes involving MEAs in the WTO. However, given that a WTO ruling involving an MEA provision will have an impact on that MEA, it is far from settled that the WTO DSB is the most appropriate body to adjudicate these cases. In particular, since the DSB provides a panel with the full discretion as to whether or not to consult an external body,²⁷ it is not certain that an MEA Secretariat would play any role in a WTO dispute.

The WTO CTE has asserted that disputes involving MEAs should be settled in the framework of those MEAs,²⁸ and some Members have called for MEA dispute mechanisms to be strengthened.²⁹ However, as mentioned above, MEA dispute settlement provisions are rarely invoked. These mechanisms tend to provide for the referral of disputes, on consent, to the international court of justice³⁰ or arbitration.³¹ To date, formal disputes between parties tend not to be launched in an MEA dispute settlement mechanism.³² The one exception is the International Tribunal on the Law of the Sea, but this body has not yet heard a case that impacts on trade policy.³³ This is not to say that there are no conflicts between parties to MEAs; rather, this reflects the reality that conflicts are resolved through negotiation, through treaty bodies, rather than by resorting to judicial settlement. This reflects not only the nature of MEA obligations (non-reciprocal), but also their operating culture. Therefore, further research is needed to explore how trade disputes relevant to MEAs can be resolved within their frameworks, so that such disputes do not end up being heard in the WTO.

²⁴ Article 3.2 of the DSU and applied, e.g. in the Venezuela Gasoline case, *op. cit.*, footnote 1.

²⁵ Para 31. See CAT&E paper on WTO and MEAs.

²⁶ E.g. Switzerland.

²⁷ Indeed, in the Sardines case, it chose not to consult with the Codex Alimentarius, even though the case turned on the interpretation of a Codex provision.

²⁸ See, e.g. 1996 Report of the Committee on Trade and Environment, WTO Doc. PRESS/TE/014 (18 November 1996).

²⁹ Submission by New Zealand, WT/CTE/W/180, 9 January 2001.

³⁰ E.g. Article 27 of the Convention on Biological Diversity.

³¹ E.g. Article XVIII of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

³² It is important to distinguish between disputes, which are between parties, and compliance procedures that exist in some MEAs (e.g. CITES, Montreal Protocol), which neither involve conflicts between specific parties, nor are these procedures necessarily judicial.

³³ In 2000, Chile initiated proceedings under the Tribunal in response to the EC initiating procedures under the WTO in a dispute involving swordfish, but the case was settled before it was adjudicated in either body.

Additional or new bodies might also be appropriate for resolving disputes on trade and environment, particularly if they do not involve an MEA or possibly to address the situation where only one disputant is party to an applicable MEA. These options include an international environment court, the International Court of Justice, and international arbitration bodies, such as the Permanent Court for Arbitration. These possibilities have been scarcely researched in this context.

2.2.3 Many trade and environment disputes lend themselves to non-judicial alternative dispute resolution mechanisms.

There may be solid grounds for exploring non-traditional dispute resolution mechanisms that are alternative to seeking recourse from WTO dispute panels. International trade is based on reciprocity and comparative advantage; WTO rules and the DSB provide a framework for these notions. In contrast, environmental obligations tend to be of a non-reciprocal nature, which raises the question as to whether judicial approaches, as in the WTO, which are adversarial in nature, are always the most appropriate means to resolve trade and environment disputes.

Furthermore, the WTO remedies are based on a system of economic or monetary penalties. Although the breach of an international obligation normally gives rise to a duty to make adequate reparations,³⁴ this approach may not be appropriate where the breach is based on a measure aimed at protecting the environment.

Non-compliance mechanisms established under some MEAs tend to be non-confrontational in nature.³⁵ Although not perfectly comparable, it nonetheless may still be worthwhile to explore whether these principles might also apply to trade and environment disputes.

To date, nearly all disputes between WTO Members involving the environment have gone on to adjudication. However, Article 5 of the DSU contains a set of procedures aimed at preventing disputes from escalating into formal WTO trade disputes. Tools such as "mediation, good offices and conciliation procedures" are envisaged, which may be appropriate e.g. in helping parties consider options other than a trade restriction for environmental purposes.³⁶ In addition, the establishment of an Environmental Advisory Body, composed of specialists who would make recommendations on specific disputes, has been suggested as first step prior to initiating formal dispute proceedings, which might lead to more amicable resolutions.³⁷ Further research is needed on all these possibilities.

³⁴ See, e.g., Chorzow Factory Case (Jurisdiction) (Germany v. Poland), *PCIJ Ser. A. no. 9* (1927).

³⁵ E.g. non-compliance procedure under the Montreal Protocol on Substances that Deplete the Ozone Layer, established by a decision of the parties (UNEP/OzL.Pro.4/15, 25 November 1993).

³⁶ G. Marceau, *op. cit.*, footnote 9.

³⁷ *Ibid.*

3 Survey of methodological approaches

It is clear that the primary methodologies to be used in assessing dispute resolution mechanisms, and proposals for reform, are those used by international lawyers. These include treaty and customary international law interpretation, case-law analysis, and identification and assessment of comparable approaches available in other instruments and institutions, e.g. North American Commission on Environmental Cooperation, World Bank Inspection Panel, European Court of Justice, Permanent Court of Arbitration, etc.. Indeed, the bulk of the literature falls into this category.

However, other methodological approaches might also be useful. For example, scientific methodologies might be considered in assessing the impacts of disputes on the environment, although the causal links might be difficult to prove. Actor-analyses would be useful in assessing the users are of dispute settlement systems, who gains/loses, and how this all impacts on environment and development policy. In addition, economic analyses might be useful in assessing the effectiveness of available and proposed remedies.

4 Conclusions

At root of the research and analysis over dispute settlement in trade and environment is the need to balance tensions between the political and judicial processes. This is particularly challenging when the political reality is such that the political process is unable to set the necessary direction on fundamental issues, as is the case with trade and environment. So far the WTO Dispute Settlement Body has proven to be a central actor in defining the trade and environment debate. However, there are deficiencies, which need to be addressed by research that examines not only improvements to the WTO system, but also possibilities in other fora.

5 Literature

Andrew W, Shoyer: Panel selection in WTO dispute settlement proceedings. *Journal of international economic law*, vol. 6 203-209, Mar 2003.

Bryan, Mercurio 2004: Improving dispute settlement in the World Trade Organization: the dispute settlement understanding review - making it work? *Journal of world trade*, vol. 38 795-854.

Busch, Marc. L. and Eric Reinhardt 2005: Three's Crowd: Third Parties and WTO Dispute Settlement.

Chad P, Bown 2002: The Economics of Trade Disputes, the GATT's Article XXIII, and the WTO's Dispute Settlement Understanding. *Economics & Politics*, 2002, 14, 3, Nov, 283-323.

Charnovitz, Steve 2001: "Rethinking WTO Trade Sanctions." *The American Journal International Law*, Vol. 95, 792 - 832.

- Choo, Myung Hoon 1997: "An Institutionalist Perspective on Resolving Trade-Environmental Conflicts." *Journal of Environmental Law and Litigation*, Vol. 12, 433-469.
- Choo, Myung Hoon 1998: "GATT Non-Violation Issues in the WTO Framework: Are They the Achilles' Heel of the Dispute Settlement." *Harvard International Law Journal*, Vol. 39, 311 - 352.
- Choo, Myung Hoon 1999: "Dispute Settlement Mechanisms of Regional Economic Arrangements and their Effects on the World Trade Organization." *Temple International and Comparative Law Journal*, Vol. 13, 253 - 284.
- Craik, A. Neil 1998: "Recalcitrant Reality and Chosen Ideals: The Public Function of Dispute Settlement in International Environmental Law." *Georgetown International Environmental Law Review*, Vol. 10, 551-580.
- Croley, John H. Jackson and Steven P. 1996: "Editorial Comment: The WTO Dispute Settlement Understanding - Misunderstandings on the Nature of Legal Obligation." *The American Society of International Law*, Vol. 90, 193 - 213.
- Davey, William J 2001: "International Economic Conflict and Resolution: The World Trade Organization's Dispute Settlement System." *South Texas Law Review*, Vol. 42, 1199-1208.
- Davey, William J 2001: "International Economic Conflict and Resolution: Questions for William J. Davey." *South Texas Law Review*, Vol. 42, 1209-1214.
- Dixon, Craig A. A. 2000: "Environmental Survey of WTO Dispute Panel Resolution Panel Decisions Since 1995: "Trade at All Costs?"" *William and Mary Environmental Law and Policy Review*, Vol. 24, 89-119.
- Duncan, Christopher 2002: "Out of Conformity: China's Capacity to Implement World Trade Organization Dispute Settlement Body Decisions After Accession." *American University International Law Review*, Vol. 18, 399-506.
- Dunoff, Jeffrey L. 1994: "Resolving Trade-Environment Conflicts: The Case for Trading Institutions." *Cornell International Law Journal*, Vol. 27, 607-629.
- Dunoff, Jeffrey L. 1994: "Institutional Misfits: The GATT, The ICJ & Trade-Environment Disputes." *Michigan Journal of International Law*, Vol. 15, 1043 - 1128.
- Ernst-Ulrich, Petersmann 2003: WTO negotiators meet academics: the negotiations on improvements of the WTO dispute settlement system. *Journal of international economic law*, vol. 6 237-250.
- Feeney, Sean P. 2002: "The Dispute Settlement Understanding of the WTO Agreement: An Inadequate Mechanism for the Resolution of International Trade Disputes." *Pepperdine University School of Law*, Vol. 2, 99 - 115.
- Gaffney, John P. 1999: "Due Process in the World Trade Organization: The Need for Procedural Justice in the Dispute Settlement System." *American University International Law Review*, Vol. 14, 1173-1221.
- Geert A, Zonnekeyn 2004: EC Liability for Non-implementation of WTO Dispute Settlement Decisions--Are the Dice Cast?. *Journal of International Economic Law*, June 2004, vol. 7 483-90.

- Girouard, Robert J. 2003: "Water Export Restrictions: A Case Study of WTO Dispute Settlement Strategies and Outcomes." *Georgetown International Environmental Law Review*, Vol. 15, 247 - 289.
- Guruswamy, Lakshman D. 1998: "Should UNCLOS or GATT/WTO Decide Trade and Environment Disputes." *Minnesota Journal of Global Trade*, Vol. 7, 287-328.
- Howse, Robert 2002: "The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate." *Columbia Journal of Environmental Law*, Vol. 27, 491-521.
- Hudec, Robert 1997: "Book Review and Notes: The GATT/WTO Dispute Settlement System: International Law, International Organizations and Dispute Settlement - by Ernst-Ulrich Petersmann." *The American Society of International Law*, Vol. 91, 750 - 752.
- Hudec, Robert E. 1999: "The New WTO Dispute Settlement Procedure: An Overview of the First Three Years." *Minnesota Journal of Global Trade*, Vol. 8, 1 - 53.
- ICTSD 2003: "Review of the Dispute Settlement Understanding." *Bridges*, Vol. 1, No. 8, 2.
- Jackson, John H. 1997: "Editorial Comment: The WTO Dispute Settlement Understanding - Misunderstandings on the Nature of Legal Obligation." *The American Society of International Law*, Vol. 91, 60 - 64.
- James, Smith 2004: Inequality in International Trade? Developing Countries and Institutional Change in WTO Dispute Settlement. *Review of International Political Economy*, 2004, 11, 3, Aug, 542-573.
- Joergens, Konstantin J. 1999: "True Appellate Procedure or only a Two-Stage Process? A Comparative View of the Appellate Body under the WTO Dispute Settlement Understanding." *Law and Policy in International Business*, Vol. 30, 193 - 229.
- John H., Jackson 2002: Perceptions about the WTO Trade Institutions. *World Trade Review*, March 2002, vol. 1, pp. 101-14.
- John H., Jackson 2002: Designing and Implementing Effective Dispute Settlement Procedures: WTO Dispute Settlement, Appraisal and Prospects. *The global trading system*. Vol. 2. Core rules and procedures, 2002, pp. 103-21.
- Joost, Pauwelyn 2002: Cross-Agreement Complaints before the Appellate Body: A Case Study of the EC-Asbestos Dispute. *World Trade Review*, March 2002, vol. 1, pp. 63-87.
- Joost, Pauwelyn 2003: How to Win a World Trade Organization Dispute Based on Non-World Trade Organization Law? Questions of Jurisdiction and Merits. *Journal of World Trade*, December 2003, v. 37, iss. 6, pp. 997-1030.
- Joost, Pauwelyn 2004: Recent Books on Trade and Environment: GATT Phantoms Still Haunt the WTO *European Journal of International Law*, 2004, 15, 3, June, 575-592.
- Kupfer-Schneider, Andrea 1999: "The Evolution of Dispute Resolution Regimes in International Trade Organizations." *Michigan Journal of International Law*, Vol. 20, 697-773.
- Lichterbaum, Peter 1998: "Procedural Issues in WTO Dispute Resolution." *University of*

Michigan Law School Michigan Journal of International Law, Vol. 19, 1195 - 1274.

- Makane, Mbengue and Urs P., Thomas 2005: The precautionary principle: torn between biodiversity, environment-related food safety and the WTO. *International Journal of Global Environmental Issues*; 2005, vol.5 p1.
- Marceau, Gabrielle 1999: "A Call for Coherence in International Law -- Raises for the Prohibition Against the "Clinical Isolation" in WTO Dispute Settlement." *Journal of World Trade*, Vol.33, issue 5, 87-152.
- McCallion, Kenneth F. and H. Rajan Sharma 2000: "Conference on International Environmental Dispute Resolutions: Environmental Justice without Borders: The Need of an International Court of the Environment to Protect Fundamental Environmental Rights." *George Washington Journal of International Law & Economics*, Vol. 32, 351 - 365.
- McGee, Henry W. 2001/2002: "Transboundary Dispute Resolution as a Process and Access to Justice for Private Litigants: Commentaries on Cesare Romano's the peaceful settlement of international environmental disputes: a pragmatic approach (2000)." *UCLA Journal of Environmental Law & Policy*, Vol. 20, 109-132.
- Palmeter, David and Petros C. Mavroidis 1998: "The WTO Legal System: Sources of Law." *The American Journal International Law*, Vol. 92, 398 - 413.
- Palmeter, David 2000: "THE WTO AS A LEGAL SYSTEM." *Fordham International Law Journal*, Vol. 24, 444-480.
- Pauwelyn, Joost 2000: "Enforcement and Countermeasures in the WTO: Rules Are Rules - Toward a more Collective Approach." *The American Journal International Law*, Vol. 94, 335 - 347.
- Peel, Jacqueline 2002: "Confusing Product with Process: A Critique of the Application of Product-based Tests to Environmental Process Standards in the WTO." *Environmental Law Journal*, Vol. 10, 217-244.
- Petersmann, Ernst Ulrich 2000: "Prevention and Settlement of International Trade Disputes Between the European Union and the United States." *Tulane Journal of International and Comparative Law*, Vol. 8, 233-260.
- Ragosta, John A. 2000: "Part I: Review of the Dispute Settlement Understanding (DSU): Panel 1 E: Unmasking the WTO--Access to the DSB: Can the WTO DSB Live up to the Moniker "World Trade Court"?" *Law and Policy in International Business*, Vol. 31, 739-768.
- Rangaswami, Viji 2000: "Presentation Summary and Comments: Part I: Review of the Dispute Settlement Understanding (DSU): Panel 1 C: Stage III - Operation of the Appellate Process and Functions, Including the Appellate Body." *Law and Policy in International Business*, Vol. 31, 701 - 704.
- Schloemann, Stefan Ohlhoff and Hannes L. 1999: ""Constitutionalization" and the Dispute Settlement in the WTO: National Security as an Issue of Competence." *The American Journal International Law*, Vol. 93, 424 - 451.
- Shoyer, Andrew W. and Eric M. Solovy 2000: "Part I: Review of the Dispute Settlement

- Understanding (DSU): Panel 1 C: Stage III - Operation of the Appellate Process and Functions, Including the Appellate Body: The Process and Procedure of Litigating at the World Trade Organization: A Review of the Work of the Appellate Body." *Law and Policy in International Business*, Vol. 31, 677 - 694.
- Snoderly, Anna Beth 1996: "Clearing the Air: Environmental Regulation, Dispute Resolution and Domestic Sovereignty under the World Trade Organization." *North Carolina Journal of International Law & Commercial Regulation*, Vol. 22, 241-306.
- Susan, Esserman and Robert Howse 2003: The WTO on Trial. *Foreign Affairs*; Jan/Feb2003, Vol. 82, p130.
- Trachtman, Joel P. 1999: "The Domain of WTO Dispute Resolution." *Harvard International Law Journal*, Vol. 40, 333-377.
- Treves, Tullio 1999: "Conflicts between the International Tribunal for the Law of the Sea and the International Court of Justice." *Journal of International Law and Politics*, Vol. 31, 809-821.
- Van der Borght, Kim 1999: "The Review of the WTO Understanding on Dispute Settlement: Some Reflections on the Current Debate." *American University International Law Review*, Vol. 14, 1223-1243.
- Van der Borght, Kim 2000: "Book Review and Note: Dispute Settlement in the World Trade Organization. By David Palmeter and Petros C. Mavroidis." *The American Journal International Law*, Vol. 94, 427-430.
- Wilhelm Kohler¹ 2004: The WTO Dispute Settlement Mechanism: Battlefield or Cooperation? A Commentary on Fritz Breuss. *Journal of Industry, Competition and Trade*, Vol. 4, 317 – 336.
- William A., Kerr 2002: Who Should Make the Rules of Trade?--The Complex Issue of Multilateral Environmental Agreements. *Estey Centre Journal of International Law and Trade Policy*, 2002, vol. 3, 163-75.
- William J., Davey 2005: The WTO Dispute Settlement System: The First Ten Years. *Journal of International Economic Law*, March 2005, vol. 8, 17-50.
- Wofford, Carrie 2000: "A Greener Future at the WTO: The Refinement of WTO Jurisprudence on Environmental Exceptions to GATT." *The Harvard Environmental Law Review*, Vol. 24, 563-592.

6 WTO Member Submissions on the Dispute Settlement Review

- Proposed Amendment of the Dispute Settlement Understanding - Communication by Canada, Costa Rica, Czech Republic et. al.* (22 November 1999). No. WT/MIN(99)/8.
- Amendment of Certain Provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes - Submission by Canada, Bolivia, Colombia, Costa Rica et. al.* (1 November 2001). No. WT/MIN(01)/6.
- Proposal to Review Article 17.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes - Submission by Thailand* (20 March 2002). No.

TN/DS/W/2

Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO Related to Transparency (22 August 2002). No. TN/DS/W/13

India's Questions to the European Communities and its Member States on their Proposals Relating to Improvements of the DSU (7 May 2002). No. TN/DS/W/5

Negotiations on the Dispute Settlement Understanding - Submission by the LDC-Group (9 October 2002). No. TN/DS/W/17

Contribution by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the Doha Mandated Review of the Dispute Settlement Understanding (DSU) (27 November 2002). No. TN/DS/W/25

Negotiations on Improvements and Clarification of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement - Submission by Chile and the United States (23 December 2002). No. TN/DS/W/28

Contribution of Canada to the Improvement of the WTO Dispute Settlement Understanding (24 January 2003). No. TN/DS/W/41

Amendment of the Understanding on Rules and Procedures Governing the Settlement of Disputes - Submission by Japan (22 January 2003). No. TN/DS/W/32

Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO Related to Transparency (11 February 2003). No. TN/DS/W/46

Contribution of the European Communities and its Member States to the Improvement and Clarification of the WTO Dispute Settlement Understanding (24 January 2003). No. TN/DS/W/38

Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement - Submission by Chile and the United States (14 March 2003). No. TN/DS/W/52

Third and Fourth Formal Meetings of the Special Session of the Dispute Settlement Body - Report by the Chairman of the Trade Negotiations Committee (2 October 2002). No. TN/DS/3.