CHAPTER 17

The Challenge Posed to the WTO Dispute Settlement System by the Imbalance in Developing and Developed Country Participation

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1 Introduction

The twentieth anniversary of the World Trade Organization—WTO—will be celebrated in the year 2015.

For the reasons and purposes cited below, this anniversary would justify, we believe, separating from the ongoing Doha Round of Negotiations, which began in 2001,1 matters related to the amendment of the Dispute Settlement Understanding or DSU.2

The specificity and immediate impact of dispute settlement matters, and need of reaching an early understanding, among other factors, would justify such separation.

One of the purposes of such an amendment would be, among many others, the correction of the existing imbalance in developing3 and developed country participation in the DSU and, in so doing, reinforce that essential function of the WTO: “the maintenance of a proper balance between the rights and obligations of Members”.4

The experience of these last years demonstrates the United States and the European Union have been the leading participants in the WTO system of

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1 www.wto.org: The Doha Round.
2 In November 2001, at the Doha Ministerial Conference, member governments agreed to negotiate to improve and clarify the Dispute Settlement Understanding which is part of the Doha Development Agenda. Although considerable progress has been made since that date, as of the time of this writing the subject remained outstanding.
3 As elaborated ahead, as opposed to developed and least-developed countries, there are different categories of developing countries.
4 Article 3(3) of the DSU states as follows: “The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members” (emphasis added).
disputes and the participation of the great majority of developing countries has been marginal. In the opinion of this writer, the persistence of this imbalance threatens the viability of the system and requires major corrections.

2 Structure of the WTO

The WTO was established by the Marrakesh Agreement of April 15, 1994. Its original member countries were 128 and are now 159. Its functions and decisions are undertaken by the Ministerial Conference which is composed of representatives of all its Members, developed, developing and least developed. It meets every two years and has the authority to make decisions on all matters under any of the Multilateral Trade or Covered Agreements attached as Annexes to the WTO.

In the intervals between meetings, the functions of the Ministerial Conference are conducted by the General Council, also composed of representatives of all the Members and which, among other functions, discharges, as Chairman, those of the Dispute Settlement Body or DSB. The latter administers the rules and procedures of the DSU.

The DSU, together with the Multilateral Agreements on Trade in Goods, on Trade in Services and on Trade—Related Aspects of Intellectual Property Rights, is one of the Covered Agreements attached, as Annex 2 to the Marrakesh or WTO Agreement. They are all an integral part of the latter whose provisions are binding on all WTO Members.

3 Objectives and Functions of the WTO

In spite of the unequal participation of developing and developed countries in the WTO dispute settlement system, as described ahead, the various provisions of the WTO Agreement and of the DSU, cited below, reiterate that their objectives, benefits and solutions apply, equally, without discrimination, to all its members, developed, developing or least developed.

Thus, according to its Preamble, an objective of the WTO is:

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5 Summarized from Article IV of the Marrakesh Agreement of April 15, 1994, which established the WTO.