

Book Reviews

David Palmeter and Petros C. Mavroidis, *Dispute Settlement in the World Trade Organization – Practice and Procedure*, The Hague et al.: Kluwer Law International (1999), pp. vii–xvi and 1–313

The authors follow the ‘thickening of legality’ in the dispute resolution process from GATT to the WTO Agreement. If ‘conciliation’ under GATT was a diplomatic process, gradually it has become more legalistic, and under the WTO Agreement this has resulted in an almost judicial system. The Panel and the Appellate Body, established for the purposes of dispute resolution, bear a striking resemblance to courts. The book suggests that diplomacy and negotiation still remain central but the focus is now transposed to the various legalistic procedures. As the authors ‘peel off’ the layers of procedural legality they also provide the principal theoretical and historical information.

The first chapter introduces the main concepts and briefly meanders from Bretton Woods and the Havana Charter to the Marrakesh Agreement. The WTO structure is complicated indeed and the tabular map of councils, bodies, groups and committees give the reader a bird’s-eye view of the organization and the relative position of the main actors, the Dispute Settlement Panels and the Appellate Body.

In the second chapter the authors also examine the conflict among agreements and their simultaneous application, regional and local government measures as well as the specific legal interest requirements. As any jurist will point out, jurisdiction is of paramount concern to all courts in the world. The Dispute Settlement Body is no exception in this respect. The Dispute Settlement Understanding (DSU) applies to all disputes concerning the ‘covered agreements’. The covered agreements and the Understanding itself are conveniently reproduced in the appendix.

Chapter three is a detailed study of the various sources of law in the WTO. The authors scrutinize the covered agreements, the reports of prior panels, the customary interpretation of international law, the writings of the most highly qualified scholars and general principles of law. Although highly theoretical, the chapter is understandable and easy to read.

A substantial part of the book is dedicated to the Panel and the Appellate process. The authors follow it from the initial consultation request and the request for the establishment of a panel through the subject matter jurisdiction and to the rules on evidence, experts, and burden of proof. The chapters follow the classic law book approach – a step-by-step analysis of the procedure with definitions and examples.

Here, the authors also offer scores of practical details and emphasize the unique character of the dispute settlement process. As always, the flow charts come in handy.

The authors further look at the special rules and procedures that the 1996 Understanding provides as an alternative to some of the DSU articles. As a general proposition, the special rules will prevail if there is a conflict between them and the provisions of the DSU. In addition, the DSU contains several special provisions applicable to dispute involving developing countries, special rules that apply to 'non-violation' and 'other situations', and arbitration.

Arguably the most significant part of the DSU is the adoption and implementation of reports. Under the GATT, the dissatisfied party could block the consensus and prevent the adoption of the report. The WTO Agreement takes a different stance – the report is adopted *unless* all parties agree that the report should *not* be adopted ('negative consensus'). Chapter seven further considers the notification of implementation intentions, 'the reasonable period of time' and its three alternatives, the disputes regarding implementation, and 'other situation' complaints.

In chapter eight the authors scrutinize the long-recognized duty of governments to repair or remedy damage they have caused. The chapter is conveniently divided into GATT practice and WTO practice, with additional paragraphs on compensation, concession, subsidies and 'other situation' reports.

David Palmeter and Petros Mavroidis sought to address the procedural questions that confronted them in the practical world of dispute settlement and undeniably succeeded in achieving their objective in a very comprehensible manner. Their book can be usefully studied without detailed prior knowledge of WTO law. The conceptual foundation of the problems is invariably explained at the beginning of each chapter and the legal analysis flows naturally from there.

The procedural bent of the work will serve the need of every practitioner who prepares and presents cases to the dispute settlement panels of the WTO. The appendices contain all agreements that are discussed in the text and constitute roughly half the volume of this book.

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