

What should be Dispute Settlement ?

-On the Purpose of WTO Dispute Settlement
Mechanism-
Comment

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Mechanism to sustain international cooperation under the WTO

1. Punish countries for deviations from the agreements

- Punishment is not for correction of the actions (ex post reason), but for prevent deviations (ex ante reason)

2. Appeal to morality

- Supported by the morale to sustain the WTO regime

Two roles of the dispute settlement mechanism

1. Judge if deviations have occurred
 - Important for punishing actual deviations
2. Set precedents
 - Relatively more important for appealing to morality

GATT Article XXIII: Nullification or impairment

If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of (a), (b), (c), the contracting party may, ..., make written representations or proposals to the other contracting party or parties which it considers to be concerned

Causes of nullified benefits

- (a)** The failure of another contracting party to carry out its obligations under this Agreement, or
- (b)** the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
- (c)** the existence of any other situation

(a) Case of simple issue e.g., abusive use of safeguards

- Had better appeal to (automatic) punishment to prevent such deviations
- Deviating countries are likely to agree with the DSB's decision
- Punishment is used to prevent future deviations
- Monetary punishment
 - Can avoid efficiency decreasing tariffs
 - LDCs would be more likely to use DSM

(b), (c) Case of complex (or multi-) issues, e.g., trade and environment

- Accused countries are less willing to comply with unfavorable decisions of DSB
- There are often no clear-cut decisions
- DSP itself is beneficial
 - To provide a chance to discuss the issue
 - To set precedents
- Appeal to the morality to secure benefits from the agreements