Alberto do Amaral Júnior
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The WTO Dispute Settlement Mechanism

A Developing Country Perspective

Springer

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Foreword

Stability, predictability, and transparency are essential ingredients for global economic growth and development. By providing a strong, rule-based framework to ensure that trade flows as smoothly as possible, the World Trade Organization plays an important role in ensuring that these ingredients also apply to trading relations. But, of course, simply having the rules in place is not enough—they must be enforced. The WTO's dispute settlement system is central to this work. Indeed, the system is at the heart of everything we do here at the organization, and it was one of the key achievements of the Uruguay Round.

Our members rely on the system to ensure that trade disputes are solved according to an objective set of procedures that are equally applied to everybody. In this way, the system provides an essential mechanism to avoid unilateral actions and prevent trade differences from spiraling into larger conflicts. We saw this in the aftermath of the 2008 financial crisis, when the existence of an efficient and effective dispute settlement mechanism in the WTO was essential in helping to curb potentially disastrous protectionist forces. Members knew they were bound by the same rules, they knew where the red lines were, and they knew the potential consequences if those lines were breached. The system was put to the test, and it passed.

The high level of activity of the WTO's dispute settlement system attests the importance that members attach to it. Two thirds of the WTO membership, including developed and developing countries, have participated in the system in one way or another over the years. Since 1995, over 500 disputes have been brought to the WTO. This exceeds the rate of any other public international law tribunal. Moreover, compliance rates are high, at around 90%, with members faithfully complying with the rulings in most cases. The fact that the organization continues to see new disputes being brought is a sign of the trust that members place in the system.

Like any other such body, the WTO dispute settlement system has room for improvement, and it is natural that WTO members may have a range of views on what the priorities for improvement should be. Sustained and constructive dialogue is essential to address concerns and ensure that the system is responsive to the needs of its members. Initiatives like this publication can help to inform this important

debate, enriching our reflections about the system, its challenges, and potential ways forward.

More specifically, this volume compiles experiences and reflections about the WTO's dispute settlement system from a developing country angle. This is a welcome addition to the literature on dispute settlement as developing countries are important users and beneficiaries. Brazil, for example, has been successful in promoting its interests through WTO disputes in important sectors such as agricultural goods and aircraft and also in defending its public policies aimed at protecting the environment. By showcasing the experience of Brazil and other developing countries in using the WTO's dispute settlement system, I hope that this publication will foster greater understanding of the system and encourage other developing countries to participate.

I congratulate everybody who has contributed to this publication and particularly the organizers for this excellent initiative. They have brought together authors from different backgrounds, including diplomats, academics, and lawyers, many of whom are well known in the international trade community. I hope that this volume can inspire new generations to get engaged in the working of the WTO so that it can continue to promote growth, development, and job creation around the world for many years to come.

Brasília, Brazil Roberto Azevêdo

Prologue

The multilateral trading system during the negotiated transition of the GATT to the WTO underwent significant changes. Among them is not only a trend toward the universality of its membership and an increase *ratione materiae* of the issues covered by its rules but also what can be termed as a significant thickening of legality. Thickening of legality was what I stressed in my 1996 Gilberto Amado Memorial Lecture on the analysis of the WTO dispute settlement system, relaying in my initial experience, as Chair, in that year of the Dispute Settlement Body of the new organization (Lafer 1996).

An overall thickening of legality was what effectively led to a rules-based multilateral trading system, qualitatively different from the one that was set-up by the GATT and its evolution throughout the years. As it is known, the WTO went far beyond cooperative diplomatic negotiations in matters of trade and institutional efforts related to the handling of conflict of interests regarding "nullification an impairment" of the benefits contemplated by the provisions of the GATT. These were shaped as "diplomatic jurisprudence", a rather unique blend of legal and diplomatic strategies in Hudek's formulation (Hudek 1975, p. 6).

In contrast, thickening of legality explains why one of the functions of the WTO is the administration of the Understanding on Rules and Procedures Governing the Settlement of Disputes—the DSU.[1] That is understandable since the DSU was conceived as "a central element in providing security and predictability to the multilateral trading system", preserving "the rights and the obligations of Members under the covered agreements" and enabling the clarification "of the existing provisions of these agreements in accordance with customary rules of interpretation of public international law".[2]

In my 1996 lecture, I recalled H. L. Hart's distinction between primary rules and secondary rules, pointing out that in his view of the law, the growing interrelationship between them is a sign of maturity of a legal system (Hart 1961). Primary rules are those that prescribe, proscribe, encourage, or discourage behaviors. In the case

[1] Marrakesh Agreement—III—3.

[2] DSU—art 3—2.

of the WTO, they are essentially the subject matter of the single undertaking of the covered agreements that resulted from the Uruguay Round of Negotiations. Secondary rules are rules about rules. They deal with elaboration and application of rules. Thickening of legality in the WTO, as an expression of the progressive development of international law came about through the multiplication of secondary rules and very specifically in the exclusive identification, through the mechanisms and procedures of the DSU of the *quid sit juris* of the primary rules of the WTO.

One of the challenges of the international order in an era of globalization is to manage in a cooperative manner unequal political and economic power (Hurrell 2007, p. 2). In the case of the WTO, one of the key elements of the system set-up by the DSU was the explicit purpose of containing the unilateralism of power-oriented self-help. This is the meaning of article 23 of the DSU, which mandates that the "redress of a violation of objectives or other nullifications or impairment of benefits" can solely occur through the iter of the procedures foreseen in the DSU.

This resulted in a new ***locus standi*** for all the members of the WTO whatever their power-presence as key suppliers or consumers in international trade. This explains the developing country sensitivity of the merits of the WTO dispute settlement system since it enhances the positive potential role that the Law can play in an asymmetrical international system.

This potential role is related to the taming of power-oriented behavior in the settlement of disputes. This role, however, to be effective, requires a first-class knowledge of what became a new and distinctive field of international economic law. The awareness of this need and its policy implications led Brazil to the setting-up of an epistemic community (Haas 2007, p. 793), devoted to this intellectual domain. A developing country sensitivity to the role of law and an epistemic community dedicated to the WTO and its dispute settlement mechanism is a significant ingredient of the profile of the essays of this book edited by Alberto do Amaral Jr., Luciana Maria de Oliveira Sá Pires, and Cristiane Lucena Carneiro.

In order to explain the broader context in which developing country sensitivity and the expertise of the epistemic community came about it is worth recalling that one of the originalities of the WTO is that the organization was crafted and negotiated bearing in mind the simultaneous perspectives of law, economy, and politics. No single theoretical discipline can explain how it works since it operates at the crossroads of legal, political, and economic reasoning (VanGrasstek 2013, p. 12 and passim). Economic reasoning stressed and stresses the importance of the role of international trade in fostering development and the potential of reciprocal gains in increased liberalization in the trade of goods and services. Diplomats are "ex-officio" well aware of the problems of power in the international system and, in their reasoning, did not and do not ignore that power is inherent in economic life. Furthermore, as representatives of countries, they know that competition and the market can be both constructive and destructive and has both positive and negative impacts in the internal sphere of countries and of the interests of their economies. Lawyers and legal scholars, in their reasoning, stressed and stress that societies and markets do not operate in a void. They require rules and institutions for their adequate functioning. That is one of the reasons why the WTO, as a progressive

development of GATT, was conceived as a rule-based multilateral system (Lafer 2015, pp. 169–177). That also explains, as Peter Sutherland observed at the outset of the life of the new organization, that the great asset of the WTO is not its resources—as in the case of the World Bank and to a certain extent of IMF—but the credibility, acceptance, and observance of its rules.

One attribute of the WTO, as a rule-based multilateral system, is that is a by-product of the political atmosphere of the nineties, when the Uruguay Round Negotiations were concluded. The fall of the Berlin Wall and the erosion of a world that is structured around defined polarities—East-West, North-South—helped in recognizing shared views on the possibilities of international cooperation in matters of trade. As such, they led to a weakening of conflicts of conceptions regarding the organization of the world economy. In short, space was opened to a Grotian reading of international relations and consequently to the possibility of managing both conflict and cooperation in a comprehensive process which stems from the rationality and functionality of reciprocity of interests (Bull 1992, pp. 65–93).

In terms of dispute settlement that was conducive to avert trade disputes being considered political tensions, that by nature are diffuse and go beyond a circumscribed and well-defined object. Instead, the logic of the DSU is to consider trade disputes as a result of conflict of interests, on a matter sufficiently circumscribed to lead itself to claims susceptible to reasoned analysis, that can be sorted out by the application and interpretation of established and accepted rules (de Visscher 1968, pp. 78–79, 353). This opened the way for the legal settlement of trade disputes within the WTO in accordance with the rules and procedures of the DSU and explains the importance of what is stated in its article 3-10: "… request for conciliation and the use of dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all Members will engage in these procedures in good faith in an effort to resolve the dispute."

The interpretation and application of primary rules in the light of the logic of legal experience is never unequivocal or consensual. States have different interpretations of rules, their scope and application, and impact on their respective national economies. In other words, how significant may be in their political and economic view nullification and impairment of the benefits contemplated in the covered agreements to which they had consensually agreed in the Uruguay Round.

Furthermore, the complexity and extension *ratione materiae* of the issues covered by the rules of the WTO opened up a vast array of potential trade disputes. This has led in the life of the WTO to very significant use of its system of dispute settlement and the steady increase of its jurisprudence. More than **570** disputes have been settled in accordance with the secondary rules of the DSU and the facts and substantive findings contained in adopted panels and where applicable, in Appellate Body reports for each decided case, has become a substantial body of the "living law" of the WTO.

The legal, intellectual, and political importance of the "living law" of the WTO are the "material sources" that led to the maturing of an epistemic community, with a developing country sensitivity of which the 25 chapters of this book are representative.

A majority of the authors attended school at the University of São Paulo and have links with top-ranked research and policy centers on WTO law in Europe and elsewhere, which have also contributed to the volume.

The origin of the Brazilian epistemic community is related to an awareness that Brazil's locus standi in the activities of the DSU required the specialized knowledge of well-trained scholars and practitioners. Professor Luiz Olavo Baptista who was a member of the WTO Appellate Body and myself, with the experience of having been Brazilian Ambassador to the WTO (1995–1998), **and** later Foreign Minister (2001–2002), as professors of the Law School of the University of São **Paulo**, stimulated the development of this epistemic community during the *vita activa* of our academic life (Lafer 2015, pp. 94–147). It is thus with great satisfaction that we are able to see the seasoned fruits of our efforts materialize in this book. May I conclude this prologue by stressing the outstanding contribution to international economic law scholarship of this book, which was edited under the leadership of Prof. Alberto do Amaral Jr., who is one of the distinguished scholars of the Law School of the University of São Paulo and who is responsible for the enhancement of the mission of Brazil's epistemic community and its normative values related to the role of law in the international order.

São Paulo, Brazil Celso Lafer

References

Bull H (1992) The importance of Grotius in the study of international relations. In: Bull H, Kingsbury B, Roberts A (eds) Hugh Grotius and international relations. Clarendon Press, Oxford, pp 65–93

De Visscher C (1968) Theory and reality in public international law (translated from the French by Corbett, Percy Ellwood). Princeton University Press, Princeton

Haas P (2007) Epistemic communities. In: Bodansky D, Brunnée J, Hey E (eds) The Oxford handbook of international environmental law. Oxford University Press, Oxford, pp 792–806

Hart HLA (1961) The concept of law. Oxford University Press, New York, chap. V, VI

Hudek RE (1975) The GATT legal system and world trade diplomacy. Praeger, New York

Hurrell A (2007) On global order. Oxford University Press, New York

Lafer C (1996) The World Trade Organization Dispute Settlement System Gilberto Amado Memorial Lecture. United Nations, Geneva

Lafer C (2015) Direito Internacional: um percurso no Direito no século XXI, II. Atlas, São Paulo, pp 94–147; 166–177

Vangrasstek C (2013) The history and future of the World Trade Organization. World Trade Organization, Geneva

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Chapter 1
Introduction

Alberto do Amaral Júnior, Luciana Maria de Oliveira Sá Pires, and Cristiane Lucena Carneiro

1.1 The Notion of Epistemic Communities and the Growing Role of Developing Countries in Global Governance

This edited volume offers a collection of analyses on the WTO dispute settlement mechanism from the perspective of an epistemic community of (mostly) Brazilian experts. Contributors share the common goal to look at the WTO from a developing country's viewpoint. The WTO is situated within a highly technical field of international economic law, and the WTO dispute settlement mechanism is no less specific. In fact, dispute settlements at the WTO entail gathering expertise on highly complex issues, including production standards, public health and environmental standards, intellectual property, and scientific uncertainty. Thus, experts on the WTO dispute settlement mechanism inevitably confront complex cases that invite research and dialogue with experts from other areas of law and science. The repeated interaction of these individuals as they work to defend governments and interests of civil society, as they give opinion based on the highest standards of academic research, has contributed to giving birth to an epistemic community. In the case of this edited volume, we argue an epistemic community focused on the WTO dispute settlement

This contribution was developed during her post-doctoral program at USP which was concluded in 2018.

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mechanism that is informed by a developing country's sensitivity, which we will elaborate further in the following paragraphs.

The notion that an epistemic community has emerged—one that coalesces around diplomats, international economic law scholars, and public officials working on WTO matters—has enormous traction nowadays. This book is particularly focused on the epistemic community that congregates individuals with a southern sensitivity because of their background. The majority of contributors to this edited volume were educated in a developing country and socialized within a tightly woven group of experts, with a shared knowledge base and converging agendas. The School of Law at the University of São Paulo has been a catalyst to that end. After their formative years at USP, these individuals found space in academia, in the private sector, and in the government—often after completing graduate studies at the most prestigious institutions on WTO law in Europe and the United States.

1.1.1 What Is an Epistemic Community and What Is Its Importance?

Research on epistemic communities dates back to the early 1990s and is associated with Peter Haas' seminal article, now widely cited, titled "Epistemic Communities and International Policy Coordination" (Haas 1992). Haas understands epistemic communities to refer to a group of individuals who share "beliefs or faith in the verity and the applicability of particular forms of knowledge or specific truths (Haas 1992)." The concept has evolved and spread since 1992, when a special issue of the journal *International Organization* launched the project. It now refers to a "professional network with authoritative and policy-relevant expertise (Mai'a Davis Cross 2013)." In this article, Mai'a Davis Cross stresses how epistemic communities influence actors with decision-making power, including governments and also nonstate actors. The author emphasizes the role of epistemic communities when it comes to translating knowledge into power. This dynamic yields policies and political decisions that are informed by the knowledge generated among the members of the epistemic community—and for this reason it possesses particular qualities. We argue that these policies and political decisions are more likely to reach a consensus and to lead to stable propositions that governments will adhere to.

High levels of consensus and adherence are not trivial in an arena where conflicting interests and zero-sum dynamics prevail. International trade is often characterized as a prisoner's dilemma game, wherein governments are tempted to engage in selfish maximization of strategies with the goal of protecting domestic interests. The role of an epistemic community in this context is to provide assurance and to depoliticize issues, with the ultimate goal of reaching cooperation, leading to superior levels of exchange.

Epistemic communities also work as catalysts of agenda, wherein groups of individuals mobilize to include new issues on the agenda of international negotiations. An early article by Willian Drake and Kalypso Nicolaïdis discusses precisely the role of an epistemic community of international trade experts with respect to the

inclusion of trade in services as part of the mandate of the Uruguay Round (Drake and Nicolaïdis 1992). This article is one of several pieces that make up the 1992 special issue of the journal *International Organization*, edited by Peter Haas. Other articles in the special issue address the contribution of whalers, environmentalists, and central bankers—all with the same goal of coalescing knowledge and expertise to promote international regulation (Davis Cross 2013).

This edited volume follows on the footsteps of these experts and establishes a dialogue with the scholarship on epistemic community to provide a new cleavage: that of development geopolitics. The contribution of this specific epistemic community distinguishes itself by its Southern sensitivity to the overall theme of trade liberalization, as it relates to dispute settlement in the WTO. We argue that this epistemic community's specificity is precisely the fact that its members were trained and socialized in a developing country. This circumstance, we argue, informed these individual's interpretation of the principles that inform the GATT/WTO regime, with concrete and observable implications for their engagement with the organization.

The contribution of this epistemic community is particularly relevant at a time when developing countries are claiming a greater role in global governance. This phenomenon is widely acknowledged by international law scholars, and it is especially relevant when we analyze an international organization where consensus is so important and where each country that is a member has a right to vote. Evidence of this greater role is abundant when one looks at the history of the Doha Round. It is also clear that Brazil has mobilized its status among developing countries to gather support in the cotton and sugar disputes.[1] As some of the contributors to this edited volume will analyze further, Brazilian scholars and diplomats fostered an alliance with other developing countries—as well as least developed economies—to operate as "third participants" during these two highly visible trade disputes.

Overall, the editors are convinced that this epistemic community represents more than the sum of its members. It advances knowledge and a knowledge-informed policy agenda for the future of dispute settlement in the WTO. It is still unclear if developing countries will have their way with respect to their demands during the Doha Round, but when it comes to the Dispute Settlement Understanding and the growing practice of the Appellate Body, there is no question that this epistemic community has been effective and successful.

1.2 The Role of the WTO in the Regulation of International Trade

The WTO created a system of rules endowed with its logic and specific principles, which regulates interdependence and allows for economic operations in the globalized world. Similar to the domestic sphere, the global market requires careful

[1] U.S. Cotton (DS267); E.U. Sugar (DS266).

normative and institutional development work. The discontinuity of trade and the continuity of forecast are characteristics of the market, only developing and improving when some rules and principles can guide the behavior of economic agents. The regulations that compound the multilateral trading system contributes to reducing uncertainty, increasing the degree of predictability, stimulating communication, as well as disseminating knowledge and information about what is acceptable in the relationship between states (Amaral Júnior 2013).

The WTO dispute settlement system (DSS) is considered a central element in providing security and predictability to the multilateral trading system. Otherwise, the prompt settlement of disputes under the WTO agreements is essential for the efficient functioning of the WTO and for maintaining a proper balance between the rights and obligations of members.[2] According to the WTO chronological list of dispute cases, since January 1, 1995, 540 disputes have been brought to the WTO for resolution.[3] From a dual-degree model of jurisdiction, the WTO DSB seeks to ensure a positive solution to disputes by prioritizing negotiated settlements between the parties involved in the claim. However, given the impossibility of a mutually agreed solution between the parties, it offers in Articles 3.7 and 22 the opportunity to suspend concessions and other obligations by the member considered to be harmed.

This volume intends to demonstrate the effectiveness[4] of the WTO dispute settlement mechanism, considering that on 540 cases reported, only 327 requested the panel composition and only 20 cases remained unresolved and on the agenda of the DSB.[5] Aware of the importance of international rules to the construction of international trade, in 1997 Sutherland emphasized that the most significant economic challenge facing the world has always been the need to create an international system that not only maximizes global growth but also achieves a more significant measure of equity, a system that integrates emerging powers and assists currently marginalized countries in their efforts to participate in the worldwide economic expansion (Sutherland 1997).

From these goals and principles, the WTO and its DSS have structured their work over the last 20 years with so much success, despite the difficulties faced by

[2] Article 3.3.

[3] World Trade Organization Website. Chronological List of Dispute Cases. Available at: https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm. Access: March 11, 2018.

[4] The doctrine diverges with respect to the equivalence of the meanings of the terms efficacy and effectiveness, especially in view of studies undertaken over the period of validity of classic public international law, and currently in the contemporary international legal order. The world effectiveness is considered synonymous of efficacy, which in turn corresponds to the capacity to produce the desired results, as well as the power or ability to produce effects. According to the Oxford dictionary: "producing the result that is wanted or intended; producing a successful result," Cambridge dictionary defines it as "successful or achieving the results that you want." In: Cambridge (2008), p. 449; Oxford (2010), p. 486; Collins (2000), p. 194; Longman (1995), p. 442.

[5] Worldtradelaw.net Website.

the Organization as a result of the failure to complete the Doha Round and the consequent non-updating of the WTO multilateral rules.[6]

1.3 The Appellate Body's Activity in the Resolution of International Disputes

The WTO DSS is unique among international dispute settlement systems, not only because it offers a compulsory jurisdiction and strict time frames but also due to its Appellate Body review and a detailed mechanism to ensure compliance with recommendations and rulings—the Dispute Settlement Understanding (DSU). The Appellate Body is a permanent body of seven judges, who are designated by the Dispute Settlement Body (DSB) for a term of 4 years, renewable once. The Appellate Body members must be unaffiliated with any government, and the Working Procedure for Appellate Review establishes that they should be independent and impartial, avoid direct and indirect conflicts of interest, and respect the confidentiality of proceedings. Since 2013, however, the Appellate Body has suffered a reduction in the number of its members. The United States has been blocking the appointment of new members, as well as preventing vacancies in its seven members from being filled for almost 2 years, which has affected the body's functioning due to the accumulation of further appeals. This situation has worried the members, especially the developing countries, which rely on the findings and recommendations of the Appellate Body to have legitimacy for discussing the terms of implementation with the violating member. Currently, there are only four members of the Appellate Body, and the body cannot operate since the appreciation of each case requires at least three members.

In the WTO system, the Appellate Body does not deal with factual issues, as opposed to what the panels do but only with legal matters concerning the interpretation of the WTO agreements. In this regard, the analysis and interpretation of a WTO agreement should follow the rules and understanding of international public law. In this situation, when the text is not clear enough or a particular term has several meanings, the panel and the Appellate Body have incurred

[6] The Doha round is the latest round of trade negotiations among the WTO members. It was officially launched at the WTO's Fourth Ministerial Conference in Doha, Qatar, in November 2001, and has not yet been concluded. As a consequence, the multilateral agreements have not been updated to be compatible with the new issues and necessities of the international trade system. The Doha Round main objective is achieving a major reform of the international trade system through the introduction of lower trade barriers and revised trade rules. The work program covers about 20 areas of trade. The Round is also known semi-officially as the 'Doha Development Agenda'. Its main goal is to improve the trading prospects of developing countries (World Trade Organization website).

1. the analysis of the context, considering the object or purpose of the treaty exam, which covers the subsequent practice of subsequent agreements on the same subject; or even
2. the additional principles of interpretation, by Article 32 of the Vienna Convention on the Law of Treaties of 1969.[7]

Once the dispute has been settled, such case law would not necessarily be binding on future controversies, but it is expected to be observed in cases when the same situation arises. The expectation created concerning the rules applicable to similar cases will be interpreted in the same way, contributes to the primary purposes of the system, i.e., the predictability and legal certainty.[8]

In this regard, although the Appellate Body has the attribution of making findings and recommendations based on rules of the WTO multilateral agreements, the body has interpreted unclear concepts established by those agreements in conformity with the international public law concepts. Similarly, the Appellate Body has adopted in its reports some rules and concepts inherent to other international treaties and conventions related to international trade. For these reasons, in 2000s, the interpretative function of the Appellate Body had been criticized, on the one hand, by treaty negotiators, who had argued that some given interpretations had not reflected the intention of the negotiators when the WTO agreements were negotiated in the Uruguay Round. They believed that the Appellate Body had no duty to interpret. On the other hand, a stream of scholars believed that the so-called judicial activism of the Appellate Body could represent a threat to the coherence of a multilateral trading system, especially for bringing to the WTO principles, concepts, and rules formulated for other regulatory regimes. After almost two decades of existence and various decisions and reflections, we note that the findings, reports, and, consequently, the case law efficiently demonstrate that the Appellate Body has a new function: the duty to interpret.

1.4 The Articulation Between the Public and Private Sectors in the Cases Proposed by Brazil to the WTO Dispute Settlement Body, Mainly Related to the Cotton and Sugar Controversies

In these twenty years of existence, and more than 570 consultations submitted to the WTO DSB, developing countries have undoubtedly shown active participation in the system as a complainant, a respondent, and an interested party. Accordingly,

[7] See: *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products* (DS103), Appellate Body report, para. 42; and *Korea – Measures Affecting Government Procurement* (DS163), Panel report, para. 7.11. See also Articles 31 and 33 of the Vienna Convention on the Law of Treaties of 1969.

[8] Article 3.2 of the DSU.

Brazil is widely touted as one of the most successful actors in the WTO DSS, among all countries, be it developing or developed, considering both the number of cases brought by it and the systemic implications of the cases (Shafer et al. 2008). Brazil has been considered the fourth most frequent complainant in the WTO DSS, just after the United States, the European Union, and Canada, and the country has acted as a complainant in 32 cases, as a respondent in 16 cases, and as a third party in 132 cases.[9] The prominence of Brazil before the WTO DSS has already received national and international attention and has motivated the public and private sectors to defend the multilateral trade system and to engage actively in the Doha Round of the WTO, especially in the agricultural sector.

The rules of the Agreement on Agriculture were negotiated during the Uruguay Round, and they aim to limit the use of subsidies on agricultural products and to start a progressive reduction of its grants for combating protectionist practices. The negotiation of international standards and rules for the farm sector has always been complicated at the multilateral trading system due to the substantial interests and pressure of intern groups of developed countries. Historically, those countries have granted high volumes and values of internal subsidies and subsidies to exports of agricultural products. Two of the most critical and paradigmatic disputes initiated by Brazil in the WTO DSB have dealt with these subjects, i.e., the US–Upland Cotton and the EC–Sugar. Both cases, related to agricultural subsidies granted in a higher value and amount than that allowed by the WTO Agreement on Agriculture, clearly have demonstrated a deep and broad involvement of the Brazilian government and private sectors aiming to articulate its cotton and sugar producers for legitimating the Brazilian arguments in the dispute settlement system.

Regarding the cotton controversy, since 1999, the interests of the Brazilian cotton producers have been represented by ABRAPA (Brazilian Association of Cotton Producers),[10] which together with the public and private authorities promotes the relationship between the government, merchants, producers, and the Brazilian textile industry and promotes also Brazilian cotton trade internationally (Moraes In: Costa and Bueno 2004). Previous to the consultations, in the said case, the group attended international events and discussions related to market distortions promoted by governmental actions mainly concerned with agricultural subsidies. However, in many circumstances, it was common ground that the question of agricultural subsidies could not be given merit since the appropriate forum for negotiation or contestation was the WTO (Tollini In: Costa and Bueno 2004).

[9] According to the World Trade Organization online information available at: https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm. Access: February 4, 2019.

[10] ABRAPA was established on April 7, 1999, to ensure and enhance the profitability of the cotton sector. The grower members of ABRAPA, which works to increase the global competitiveness of the Brazilian cotton industry, represent 99% of the country's planted area, 99% of its production, and 100% of its exports. ABRAPA consists of nine state associations: ABAPA (Bahia), APOCAR (Paraná), AGOPA (Goiás), AMAPA (Maranhão), AMIPA (Minas Gerais), AMPA (Mato Grosso), AMPASUL (Mato Grosso do Sul), APIPA (Piauí) and APPA (São Paulo). Available at: http://www.abrapa.com.br. Accessed on: March 10, 2018.

Therefore, it was expected that the Brazilian government would establish a strategy to bring an action against the illegal agricultural policies of the United States. In this regard, the approach used by the North American lawyers hired by the Brazilian government was the establishment of public–private partnerships; once, although the legal standing for accessing the WTO DSS is the states, the effects caused by the recommendatory decisions are extended beyond private entities. These entities were composed of specialists who, in addition to having a thorough knowledge of its market, also have the resources for engaging experts in order to strengthen the legal basis of the case to be presented to the WTO DSB. The cotton case has involved two shafts, i.e., the technical dimension, which was before a legally sound argument with favorable prospects in the WTO, and the political aspect, with the opening of the panel to the WTO.

The first milestone in the move to bring the case to the WTO was the "Technical Note" by the Department of Agricultural Trade Policies of the Ministry of Agriculture, published in April 2002. The private sector contributed, together with government agencies, to provide information for the analysis, and a joint effort was made by ABRAPA, ANEA (National Cotton Exporters Association),[11] the Ministry of Foreign Affairs, and the Ministry of Agriculture. The technical note came in the context of a political engagement to bring an action against the United States' subsidies on soy. Following the investigation on subsidies to soybeans, it was found that cotton could also be a consistent case and the case of grants on sugar practiced by the European Union. The note was aiming at presenting information that could contribute in a preliminary way to the formulation of a request for consultations with the dispute settlement mechanism, regarding the instruments of the American agricultural policy for cotton. The study had highlighted the increasing influence that the United States' subsidies had on the volume and value of cotton production, with consequent implications on the international market of fiber. It had also been highlighted that the consolidation of a restructuring process in the national cotton industry could suffer severe difficulties because of such subsidy framework. In this regard, it had been suggested that it would be possible to find incompatibilities between the United States' agricultural policy programs and the WTO rules and the commitments made by the United States to the WTO.

ABRAPA also partnered with the Ministry of Agriculture to elaborate a Brazilian report on the damages caused by the low prices of cotton to Brazilian production. The document had been annexed to the reports of the member countries of ICAC and was presented at the World Bank Conference on Cotton and Global Trade Negotiations in July 2002. The Working Group on Government Measures (WGGM) under ICAC was composed in January 2002 to identify strategies to reduce, or even eliminate, the adverse trade effects of subsidies to cotton production and trade. This initiative led producer countries to assess the impact of policies pursued by other nations in their output, which were impressed by the scale of the problem and led

[11] The ANEA was founded in 2000 with the aim of promoting and ordering Brazilian cotton exports through the development of logistics channels and exports.

them to a consensus regarding the need for joint efforts from the affected countries in the WTO.

In this regard, the case counted with the support of the Ministry of Agriculture and productive sector, represented by ABRAPA, and was supported by producers and state associations in the mobilization of resources for action in the WTO. ABRAPA was responsible for providing data concerning Brazilian cotton production and its evolution. Undoubtedly, the case has been unprecedented and involved from the technical-legal point of view. For the first time, domestic subsidies to agriculture, agricultural export credits, the peace clause, and the green box had been questioned in the WTO. Therefore, it would be necessary to prove the depressive effects of US subsidies on the international price of cotton. ABRAPA being a class entity, everything had been done through bidding and competition, and several consultations had been carried out in Brazil and abroad to find the law firm that could fit the needs of the case.

During the preparation for consultations, the case was supported by the American Agricultural Policy expert Daniel Sumner, a professor at the University of California. He suggested the Farpre Econometric Model used by the US Congress to examine the implications of its decisions on resource allocation and subsidies. This model was adapted to Brazilian needs and had been renamed Farpre-like model. The testimonies of a producer of Motocross New Zealand and of an expert who was born in Great Britain but based in Brazil, as witnesses, were presented to the panel. State associations gathered about thirty testimonies/declarations from producers who had suffered the impact of decline in cotton prices. The Environmental Working Group (EWG), a nongovernmental organization (NGO), also helped ABRAPA obtain some missing information.

On August 13, 2002, the CAMEX Board of Directors issued a resolution informing about Brazil's request for consultations. The protocol to the WTO establishing a period of informal consultations was opened without any result. In December 2002, a new phase of consultations was initiated, without, however, a decision to settle the case through diplomatic channels. There was a third meeting, which was attended by the official representatives of the countries and the lawyers and economists of the respective parties. But an agreement was finally reached in January 2003, and the informal consultation stage was closed. Brazil submitted a formal request for the opening of the panel works on March 18, 2003. Brazilian cotton producers were aware of the scale of questioning. For this reason, they have not been deluded believing a solution to the problem as soon as the panel released its reports. The composition of the panel drew the world's attention to the existence of an organized and competitive sector in Brazil, placing at the center of the discussions the damaging effects that policies of subsidies have long caused the developing countries, especially African countries.

The paradigmatic cotton case illustrates a sophisticated level of technique, knowledge, and ability in articulating the international negotiations and in the defense of Brazilian interests exercised by national diplomatic corps during the proceedings in the WTO dispute settlement. It also illustrates the kaleidoscope that compounds the WTO system, which aligns as systemic axes the legal rules, the

economic context and interests, and the political game, determining not only the establishment of the procedure but also the implementation of the Appellate Body recommendatory decision. Chapter 21 explores the case with a palette of details, while Chap. 20 is dealing with the sugar case. Next to these cases, this volume offers a detailed and critic analysis on the in the instigating and essential cases as EU—Seal by—Products, in the Chap. 17; the Retreaded Tires, in Chap. 18, and finally the Brazil-Canada Regional Aircraft Disputes, by Chap. 23.

1.5 Overview of the Chapters of the Book

In light of the 20th anniversary of the WTO in 2015, this volume brings a critical and detailed analysis of the WTO dispute settlement system (DSS) by focusing on topics that have had a systemic impact on the multilateral trade regime. The volume offers a multidisciplinary approach to the DSS by providing a rich palette of argumentative and exploratory analyses of the matters and by bringing together legal scholars, diplomats, political scientists, and civil society personalities, who perceive the system via their "developing country" sensitivity, as contributors (d'Aspremont 2015; Hass 2008). Their analysis is informed by this sensitivity, which unfolds a novel and unique perspective in the literature on Dispute Settlement Mechanism. The book aims to provide a comprehensive analysis of the two decades of dispute settlement in the WTO. From a methodological standpoint, the book produces a thorough review of the proposed topics, without limiting the analytical framework to the strict boundaries of scientific inference. Authors were invited to take a prospective look at some of the issues, and the analysis is by no means limited to the past and the present. As a result, legal, political, and economic implications of findings are discussed.

The contributions approach the topic from the perspective of individuals deeply involved in the scholarly production, as well as the daily operation, of the system—from a private, public and international standpoint. As a result, the contributors include academics in the fields of international economic law and political science, diplomats, individuals engaged in private legal practice, and individuals affiliated with the WTO, as well as WTO-related think tanks. The result is a balanced perspective on pressing issues that have arisen and that are likely to remain at the center of the scholarly and policy debate for years to come.

This collection of 23 chapters, written in a highly engaging and accessible style, deals with legal, political, and economic aspects of the WTO DSS. The volume is organized into three sections: the first section comprises five chapters and offers an assessment of the WTO DSS. The second section focuses on substantive matters and aggregates ten chapters. On the other hand, the third section addresses procedural issues and the consequences of the Appellate Body's interpretations related to the WTO case law and is comprised of nine chapters. The emphasis on assessment, substance, and process reflects a threefold approach to the analysis, which seeks to highlight commonalities among the chapters.

The Preface by the WTO Director-General Roberto Azevêdo opens the volume works, offering a summarized view regarding the relevance of the WTO dispute settlement mechanism, in the promotion of a rule-based and robust framework for the global trade relations. According to the WTO Director-General, the WTO system is at the heart of all the work developed by the Organization, and it was one of the critical achievements of the Uruguay Round. Following this further, Minister Celso Lafer, in the Prologue, recognizes the DSU as a new locus standi for all the members of the WTO, where the iter of the procedures to "redress of a violation of objectives or other nullifications or impairment of benefits" are implemented. According to his considerations, "this explains the developing country sensitivity of the merits of the WTO dispute settlement system since it enhances the positive potential role that the Law can play in an asymmetrical international system."

Chapter 1 comprises the Introduction. Part I brings five chapters that provide an assessment of the dispute settlement mechanism via several cleavages. Chapter 2 discusses the current period of crises in the WTO and questioning if this moment represents a déjà vu all over again (attributed to Yogi Berra) or the final agony, through the lenses of the former General Secretary of UNCTAD, Professor Rubens Ricupero. His contribution is followed by Chap. 3 by Minister Celso de Tarso Pereira, who analyzes Brazil's engagement within the DSB, with insights for the statements related to the reappointment of Appellate Body members and to the selection process of new Appellate Body members. Chapter 4 has been developed by Jacqueline Spolador Lopes, who supports that developing countries can use the rule-oriented dispute settlement system to leverage bargaining power in negotiations since developing nations face asymmetry in the WTO disputes, given their lack of economic power. This section concludes with the examination of Welber Barral and Renata Amaral, in Chap. 5, who questions on what the most significant and effective way is for developing countries to settle their disputes, whether the legal (and costly) or the political one.

Part II covers substantive matters and addresses essential and divisive topics whose understanding has been influenced by the WTO case law, such as (1) the case of Article XX of GATT, (2) the use of local content requirements, (3) the necessity to review the understanding concerning the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS), (4) some inconsistencies between private standards and the Agreement on Technical Barriers to Trade (TBT), (5) alternative methods of dispute resolution in the WTO; (6) the complementarity between litigation and negotiation in the WTO dispute settlement mechanism, (7) countermeasures in the WTO and the principle of proportionality, (8) the systemic problem of sequencing, (9) the Appellate Body technique to decide the disputes, and (10) the dispute settlement body's decisions in matters involving trade and services.

Part II starts with the analysis presented by Alberto do Amaral Júnior and Cynthia Kramer, in Chap. 6. The contribution examines the case of Article XX of the GATT, and the authors support that the notion of a self-limited regime—used twice by the Permanent Court of International Justice and also applied in part in the WTO case law—should be used for describing the WTO. Following this further, Umberto Celli

Junior, in Chap. 7, investigates the dissonance between the WTO case law and the rules established by the SCM Agreement, and by TRIMS when applied in conjunction with the GATT 1994, concerning the use by the WTO members of local content requirements (LCRs). In Chap. 8, Vera Thorstensen and Andreia Costa Vieira have reviewed the case law related to some concepts of the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS). The authors have intended to understand the agreements' common grounds, intersections, and distinct issues and discuss the urgency to review the WTO case law in these aspects. Michelle Ratton Sanchez Badin and Marina Takitani sign Chap. 9, which introduces the problem of private standards, which is likely to grow in dimension as more and more social actors engage the practice of regulating products and processes to accomplish various goals.

In Chap. 10, Cristiane Lucena Carneiro discusses the contribution of alternative methods of dispute resolution for trade disputes wherein trade barriers were imposed for environmental and public health reasons. The analysis argues that the alternative dispute resolution, known as "adjusted winner," may increase the possibilities of compliance and reflects greater results than expected. Ambassador Paulo Estivallet de Mesquita, in Chap. 11, argues on the complementarity between litigation and negotiation in the WTO dispute settlement mechanism, since GATT 1947 to the WTO. According to the article, in the same time that the Organization has "thickened the legality" (Lafer 1996 In: FUNAG 2012, p. 251), it encourages bilateral settlement of disputes in the Article 3.7 of the DSU. Chapter 12, by Daniel Damásio Borges, deals with the principle of proportionality and invites a constructive dialogue with the recent developments in constitutional law, arguing that there is a more significant role for proportionality when the WTO dispute settlement body decides regarding countermeasures (Möller 2012, 2015), while Chap. 13, developed by Vera Kanas and Carolina Müller, scrutinizes the problems that have arisen from the simultaneous mobilization of the procedures associated with Article 22.2 and Article 22.6 and those provided in Article 21.5 of the DSU, in light of recent cases and the agreements that deal with sequencing. Section 2 concludes with a critical reading by Carla Amaral Junqueira, in Chap. 14, concerning the legitimacy of the interpretative method used by the Appellate Body for making findings and recommendations and supports the primacy given to the text of the agreements. The final examination of the case law, regarding the commitments in services, has been implemented by Fernanda Manzano Sayeg, in Chap. 15, concerning the commitments in services, for identifying interpretation trends established by the WTO DSS.

Part III highlights, initially, an issue area that has gained prominent attention among legal scholars, practitioners, and policy makers at large: the potential conflict between WTO dispute settlement rules and those of preferential trade agreements (both reciprocal and nonreciprocal). Section 1.3 also explores some paradigmatic Brazilian disputes at the WTO and its systemic effects on the international trade law system. This part is comprised of nine chapters, as mentioned above. In this context, Chap. 16, signed by Peter-Tobias Stoll, examines the potential for conflict and solutions arising from the coexistence between the WTO DSS and the regional trade

tribunals. From a different perspective, Luciana M. de Oliveira Sá Pires and Vivian Danielle Rocha Gabriel investigate, in Chap. 17, the following conflict between the WTO dispute settlement mechanism and the proposed International Investment Court to deal with investment disputes. Chapter 18, by Counselor Luciano Mazza de Andrade and Luiz Felipe F. Schmidt, examines the unquestionable victory for Brazil "built out of political will, private sector engagement, significant investment and professionalism in every dimension of the process" represented by the cotton case in the WTO dispute settlement mechanism, whereas Christiane Aquino Bonomo, in Chap. 19, describes with details the case EC—Export Subsidies on Sugar, in which Brazil, a low-cost producer and competitive exporter of sugar, has been faced with multiple tariff and nontariff barriers in the exportation of such commodity to European Union. Following this further, in the Chap. 20, Xavier Fernández Pons and Carolina Lembo discuss the relevance of the case EC—Seal Products because, for the first time, the Appellate Body has ruled that a general trade ban of specific products, based on animal welfare, may be justified as a necessary measure for protecting public morals.

Chapter 21, by Flavio Marega, considers the significant achievement by the WTO case law concerning the exception with the understanding of Article XX(b) of the GATT 1994, which allows WTO members of restricting imports with the adoption of measures "necessary to protect human, animal or plant life and health," in the case Brazil-Retreaded Tyres. In Chap. 22, Letícia Frazão Leme offers a comprehensive and in-depth analysis of the case Lundbech v. ANVISA, which deals with the flexibilities concerning the protection of pharmaceutical test data under Article 39.3 of the TRIPS Agreement. Marcus Vinicius Ramalho, in Chap. 23, presents an instigate approach to the analysis of the Brazil—Canada Regional Aircraft cases, shedding lights on the systemic importance addressed in those disputes under the WTO Subsidies Agreement, provided by the OECD Arrangement on export credits, as well as on the perspective of Brazil, and on the differences between the parties to compete in the civil aircraft market. Part III concludes with a critical reading on the case that has consecrated the position of Brazil as a significant player in the WTO and beyond. In this context, Chap. 24, by Daniel R. Pinto, explores the Embraer-Bombardier case, examining the causes that have contributed to the litigation between Brazil and Canada in the WTO dispute settlement system. That contribution also emphasizes the creative and active structure demonstrated by Brazil to protect Embraer's interests and negotiate with Canada and its Bombardier aircraft industry.

References

ABRAPA. Available at: http://www.abrapa.com.br. Accessed 10 Mar 2018

Amaral Júnior A (2013) Curso de Direito Internacional Público, 4th edn. Atlas, São Paulo, p 431

Cambridge (ed) (2008) Advanced learner's dictionary, 3rd edn. Cambridge University Press, Cambridge, p 449

Collins (2000) Paperback English thesaurus. HarperCollins Publishers Limited, Glasgow, p 194

Davis Cross MK (2013) Re-thinking epistemic communities twenty years later. Rev Int Stud 39(1):137–160
D'aspremont J (2015) Epistemic forces in international law. In: Foundational doctrines and techniques of international legal argumentation. Edward Elgar, Cheltenham
Drake W, Nicolaïdis K (1992) Ideas, interests, and institutionalization: 'Trade in Services' and the Uruguay round. Int Organ 46(1):37–100
Haas P (1992) Introduction: epistemic communities and international policy coordination. Int Organ 46(1):1–35
Hass P (2008) Epistemic communities. In: The Oxford handbook on international environmental law. Oxford University Press, Oxford
Lafer C (1996) The World trade organization dispute settlement system. In: Funag, Gilberto Amado Memorial Lectures (ed) Revised and expanded second edition. Brasilia, 2012, p 251
Longman (1995) Dictionary of contemporary English, 3rd edn. Longman Dictionaries, Essex, p 442
Möller K (2012) The global model of constitutional rights. Oxford University Press, Oxford
Möller K (2015) The global model of constitutional rights. Oxford University Press, Oxford
Oxford (ed) (2010) Advanced learner's dictionary, 8th edn. Oxford University Press, Oxford, p 486
Shafer G, Sanchez MR, Rosenberg B (2008) The trials of winning at the WTO: what lies behind Brazil's success. Cornell Int Law J 41:383–501
Sutherland P (1997) Beyond the market: a different kind of equity. International Herald Tribune
Vienna Convention on the Law of Treaties of 1969
World Trade Organization. Online information available at: https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm. Accessed 10 March 2018
World Trade Organization Website. Chronological list of dispute cases. Available at: https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm. Accessed 11 March 2018
World Trade Organization. Canada – measures affecting the importation of milk and the exportation of dairy products (DS103), Appellate Body report, para. 42
World Trade Organization. European communities – export subsidies on sugar (DS266)
World Trade Organization. Korea – measures affecting Government procurement (DS163), Panel report, para. 7.11
World Trade Organization. United States – subsidies on upland cotton (DS267)
Worldtradelaw.net Website

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