CONTENTS

	Foreword xii
	Abbreviations xiii
	Disclaimer xv
1	Introduction to the WTO Dispute Settlement System
	Importance of the Dispute Settlement System in the WTO 1
	Functions, Objectives and Key Features of the Dispute Settlement
	System 4 Providing Society and Burdistability to the Multilatoral Trading
	Providing Security and Predictability to the Multilateral Trading System 5
	Preserving the Rights and Obligations of WTO Members under the
	WTO Agreement 6
	Clarification of Rights and Obligations through Interpretation 7 "Mutually Agreed Solution" as "Preferred Solution" 12
	"Mutually Agreed Solution" as "Preferred Solution" 12 Prompt Settlement of Disputes 13
	Prohibition against Unilateral Determinations of Violation and
	Unilateral Actions 15
	Exclusive and Compulsory Jurisdiction 16
	An Integrated Set of Rules and Procedures 17
2	Actors in the WTO Dispute Settlement Process 21
	Parties and Third Parties 21
	Parties 21
	Third Parties 22
	No Direct Access for Non-State Actors 22
	The Dispute Settlement Body (DSB) 24 Composition and Functions 24
	Decision-making in the DSB 24
	Role of the DSB Chairperson 26
	The WTO Secretariat 27
	The Director-General of the WTO 27
	The WTO Secretariat Staff 28
	The WTO Dispute Settlement Registry 29
	Panels 29 Functions and Composition of Panels 29
	Functions and Composition of Panels 29
	V

vi CONTENTS

	Administrative and Legal Support to Panels and Arbitrators 30 Appellate Body 31 The Role of the Appellate Body 31 Composition and Structure of the Appellate Body 32 The Appellate Body Secretariat 33 Arbitrators 34 Experts 35 Rules of Conduct 37	
3	The Scope of WTO Disputes 39 When Can a Dispute be Initiated? 39 What Can be Challenged? 40 Measures Attributable to a WTO Member 40 Acts or Omissions 41 Challenges to Measures "As Such" and "As Applied" 42 A Special Case: Anti-Dumping Measures 45 What Claims Can be Raised? 46 The Covered Agreements 46 Violation, Non-violation and Situation Complaints 47	
4	The Stages in a Typical WTO Dispute 49 Consultations 50 The Purpose of WTO Consultations 50 Legal Basis and Requirements for a Request for Consultations 51 Procedure for Consultations 54 Third Parties in Consultations 55 Panel Review 57 Introduction 57 Establishment of a Panel 57 The Panel Request 57 Procedures for the Establishment of Panels by the DSB 60 Multiple Complainants: Joint Panels and Separate Panels with Harmonized Proceedings 61 The Panel's Terms of Reference 64 Third Parties before the Panel 66 "Substantial Interest" 66 Timing of the Request 67 Third-party Rights 68 Limited Rights Granted by the DSU 68 Enhanced Third-party Rights 69 Panel Composition 71 The Panel Review Process 73	
	Panel Working Procedures and Timetable for Panel Proceedings 73 Written Submissions 78	
	Meetings with the Parties 80	

CONTENTS vii

General 80					
Organizational Meeting 81					
Substantive Meetings of the Panel with the Parties 81					
Third-party Session 82					
Deliberation of the Panel 83					
Function of Panels 84					
The Panel's Standard of Review 84					
Objective Assessment of the Matter (Article 11 of the DSU)					
The Special Standard of Review in Article 17.6 of the					
Anti-Dumping Agreement 88					
Judicial Economy 89					
Order of Analysis 91					
Burden of Proof, Standard of Proof and Rules of Evidence 92					
Burden of Proof 92					
Standard of Proof 93					
Rules of Evidence 94					
The Panel's Right to Seek Information 98					
The Panel Report 99					
Descriptive Part of the Panel Report 99					
Interim Review and Interim Report 100					
Findings and Recommendations 101					
Issuance and Circulation of the Final Report 103 Panel Reports in Joint Proceedings 103					
8					
Appellate Review 104					
Applicable Rules and Working Procedures for Appellate Review 104 Scope of Appellate Review 105					
Right to Appeal 108 Third Participants at the Appellate Stage 109					
Composition of Appellate Body Division 110					
Procedures for Appellate Review 111					
Notice of Appeal 111					
Notice of Other Appeal 114					
Written Submissions 114					
Oral Hearing 117					
Deliberations of the Appellate Body 118					
Mandate of the Appellate Body 119					
The Appellate Body Report 121					
Withdrawal of an Appeal 123					
Deadline for Completion of the Appellate Review 124					
Adoption of the Reports by the Dispute Settlement Body 125					
Legal Effect of Panel and Appellate Body Reports and DSB					
Recommendations and Rulings 128					
-					
Compliance with DSB Recommendations and Rulings 130					
Prompt Compliance 130					
Intentions in Respect of Implementation 131					
-					

5

viii contents

	Reasonable Period of Time for Implementation 132	
	Compliance Proceedings under Article 21.5 of the DSU 136	
	Remedies in the Event of Non-implementation 139 Compensation 139	
	Countermeasures (Suspension of Concessions and Other	
	Obligations) 141	
	Purpose of Countermeasures under the DSU 141	
	Procedure for the Authorization of Suspension of Concessions or	
	Other Obligations 142	
	Principles and Procedures Governing the Suspension of Concessions	
	or Other Obligations 143	
	Permissible Level of Suspension 144	
	Permissible Sector of Countermeasures 144	
	Arbitration under Article 22.6 of the DSU 147	
	Special Rules on Countermeasures for Prohibited and Actionable	
	Subsidies under the SCM Agreement 150	
	The "Sequencing" Issue 151	
	Multilateral Surveillance by the DSB Pending Full Implementation or Satisfaction 152	
	Special Procedures for Non-violation and Situation Complaints Non-violation Complaints 153 Situation Complaints 154	
6		
6 Other Procedural Issues Arising in WTO Dispute Settlen		
	Proceedings 155	
	Preliminary Rulings 155	
	Confidentiality 160	
	General Remarks 160	
	Confidentiality during Consultations 160	
	Confidentiality during Panel Proceedings 161	
	Confidentiality during Appellate Review 162	
	Legal Representation 162	
	Amicus curiae Submissions 163	
	Amicus curiae Briefs in Panel Proceedings 164	
	Amicus curiae Briefs in Appellate Review 165	
7	Alternatives to Adjudication by Panels and the	
	Appellate Body 167	
	Mutually Agreed Solutions 167 Nature of Mutually Agreed Solutions 167 Legal Effect and Interpretation of Mutually Agreed Solutions 169 Timing of Negotiations for, and Notification of, Mutually Agreed Solutions 169 Cond Officer Constitution and Mulitation 177	
	Good Offices, Conciliation and Mediation 171	
	Arbitration Pursuant to Article 25 of the DSU 175	

contents ix

8	Developing Countries in the WTO Dispute Settlement
	System 176
	Special and Differential Treatment 176
	Special and Differential Treatment during Consultations 176
	Special and Differential Treatment at the Panel Stage 176
	Special and Differential Treatment at the Implementation Stage 177 Accelerated Procedure – Decision of 5 April 1966 178
	Special Dispute Settlement Provisions for Least-developed Country
	Members 179
	Legal Assistance for both Developing and Developed Country
	Members 180
	Representation by External Counsel and the Advisory Centre on
	WTO Law (ACWL) 181
9	Ongoing Efforts to Improve the WTO Dispute Settlement
	System 183
	Negotiations to Improve and Clarify the DSU 183
	Secretariat's Informal Consultations Concerning the Panel Process 184
10	Further Information and Resources 186
	Legal Texts 186
	WTO Official Documents 186
	Information and Documents on the WTO Website 187
	Reference Books 188
	Contacting the WTO 189
	-
11	Annex I: Flow Chart of the WTO Dispute Settlement
	Process 190
12	Annex II: Dispute Settlement Rules 191
	Provisions on Consultation and Dispute Settlement in GATT 1994,
	GATS and the TRIPS Agreement 191
	Articles XXII and XXIII of the GATT 1994 191 Articles XXII and XXIII of the GATS 192
	Article 64 of the TRIPS Agreement 194
	The Understanding on Rules and Procedures Governing the Settlement
	of Disputes (DSU) 194
	Special or Additional Rules and Procedures Contained in the Covered
	Agreements in Force (Appendix 2 of the DSU) 227
	Article 11.2 of the SPS Agreement 227
	Articles 14.2 through 14.4 and Annex 2 of the TBT Agreement 227
	Articles 17.4 through 17.7 of the Anti-Dumping Agreement 229 Articles 19.3 through 19.5 and Annex II.2(f), 3, 9, 21 of the
	Customs Valuation Agreement 230

X CONTENTS

Articles 4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, 24.4, and 27.7 of the SCM Agreement, footnote 35 thereto, and Annex V thereof 232 Paragraph 4 of the GATS Annex on Financial Services and Annex on Air Transport Services 239 Paragraphs 1 through 5 of the Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services 239			
Rules of Conduct for the DSU (WT/DSB/RC/1) 240			
Annex III: Examples of Panel Working Procedures 250			
Annex III.A: Sample of Panel Working Procedures (Including Expert Consultation Process) 250			
Annex III.B: Sample of Additional Working Procedures for the Protection of Strictly Confidential Information (SCI) $$ 260			
Annex III.C: Sample of Additional Working Procedures for the Protection of Business Confidential Information (BCI) 261			
Annex III.D: Sample of Working Procedures for Article 21.5 Compliance Panel 264			
Annex III.E: Sample of Working Procedures for Article 22.6 Arbitration 270			
Annex IV: Examples of Timetables for Panel Proceedings 275 Annex IV.A: Sample of Timetable for Panel Proceedings (Original Panel			
Proceedings without Experts) 275 Annex IV.B: Sample of Timetable for Panel Proceedings (Original Panel Proceedings with Experts) 276 Annex IV.C: Sample of Timetable for Panel Proceedings (Compliance Panel Proceedings) 278			
Annex IV.D: Sample of Article 22.6 DSU Arbitration Timetable 279			
Annex V: Working Procedures for Appellate Review (WT/AB/WP/6) 280			
Annex VI: DSB Practices 310 Working Practices Concerning Dispute Settlement Procedures (WT/DSB/6) 310 United States – Section 306 of the Trade Act and Amendments Thereto (WT/DS200/13) 312			
Annex VII: Communication from the Director-General on Article 5 of the DSU (WT/DSB/25) 313			
Annex VIII: Decision of 5 April 1966 on Procedures under Article XXIII (BISD 14S/18) 320			

CONTENTS Xi

19	Annex IX: Decisi	on of 12 April 1989 on Improvements to
	the GATT Dispute Settlement Rules and Procedures	
	(BISD 36S/61)	323

20 Annex X: Historic Development of the GATT/WTO Dispute Settlement System 326

The System under the GATT 1947 and its Evolution over the Years

Articles XXII and XXIII of the GATT 1947 and Emerging
Practices 326

Limitations of the GATT Dispute Settlement System 328

Dispute Settlement under the Tokyo Round "Codes" 330

The Uruguay Round and the Decision of 1989 on Improvements to GATT Dispute Settlement 330

Major Changes in the Limitation 221

Major Changes in the Uruguay Round 331

- 21 Annex XI: Index of Official Titles and Short Titles of WTO Disputes (as of 1 December 2016) 332
- 22 Annex XII: WTO Disputes Reports Circulated and/or Adopted 361

Index 380

FOREWORD

This Handbook explains the rules and procedures of the WTO dispute settlement system, explores the practices that have arisen in its operation since its entry into force on 1 January 1995 and provides a comprehensive account of the existing jurisprudence concerning dispute settlement procedures. It also includes useful information on the operation of the WTO dispute settlement system to date, including tips about notification procedures, templates of working procedures and timetables, timelines of actual disputes, statistical data, etc. The primary purpose of this Handbook is to explain the WTO dispute settlement system to an interested person who may not necessarily have a legal background. With its detailed content and practice-oriented focus, it may also serve as a useful reference tool to experienced practitioners of WTO law, including not only prospective panelists and private counsel but also government officials from WTO members.

In this respect, the term "WTO member" appears in lower case throughout this Handbook, contrary to the capitalization of the term "WTO Member" as a matter of consistent usage throughout the WTO Agreement, including the DSU, and all panel and Appellate Body reports. The lower case is used in this Handbook to be consistent with the editorial style adopted by Cambridge University Press for CUP/WTO co-publications. For correct legal usage in other contexts, including in official WTO dispute settlement practice, the term "WTO Member" should be capitalized.

This second edition of the Handbook has been updated by a team of dispute settlement lawyers from the WTO Secretariat, including Rambod Behboodi, Tania Parcero Herrera, Ruxton McClure and Matthew D'Orsi, under the direction of Maria J. Pereyra. Special thanks should be given to many other colleagues from the Legal Affairs Division, the Appellate Body Secretariat, the Rules Division and the Information and External Relations Division who have assisted in researching, drafting, editing, proofreading and designing this publication.