WTO Dispute Settlement and the Appellate Body Crisis: Detailed Survey Results
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Introduction

This report accompanies the working paper “WTO Dispute Settlement and the Appellate Body Crisis: Insider perceptions and Members’ revealed preferences.” It presents the results of an on-line, anonymous survey of views on the operation of the WTO dispute settlement process and the role of the Appellate Body in particular. The data were collected in mid-2019. The survey instrument was sent to all WTO delegations with the request to complete the questionnaire and to forward it to the relevant team in capitals. In addition to WTO delegations, the survey was also sent to legal practitioners, the International Chamber of Commerce (ICC), the Pacific Economic Cooperation Council (PECC), and the WEF (World Economic Forum), in all cases with a request to pass on the survey to others engaged in or concerned with WTO dispute settlement. A total of 168 responses were received. Overall only 25% of WTO Members responded to the survey, defined as a response by a government official based in Geneva or in the capital, counting the EU as one. Additional information on survey design and participation is provided in the text of the working paper.

Descriptive analysis of survey responses

For each question with a “yes-no” answer structure, we report below percentage shares of yes (green) and no (red) responses by type of professional affiliation (numbers of respondents by professional affiliation taking each question are reported in parentheses). We do so for the whole sample and for 4 different subsets of the population:

1. those respondents affiliated with an organization/institution in a high income country;
2. those affiliated with an organization/institution in a middle or low income country;
3. respondents that declare to be responsible for/involved in WTO DS cases;
4. those that declare not to be responsible for / involved in DS cases.

Income thresholds used to define the first two of the categories listed above are based on 2019 thresholds from the World Bank. For the categories based on the nationality of organizations/institutions we exclude those respondents with a professional affiliation to an International Organization in those (rare) cases where they specified a precise nationality for their organization. In each panel (at the bottom-right corner) we specify the total number of respondents answering the respective question within the relevant empirical population (N).

The same approach has been followed for the question with a different answer structure (question 22).
Question 1

The Appellate Body impasse largely concerns the EU and the US, so we are staying out of it.

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 2

Has the Appellate Body gone beyond its boundaries?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 3

WTO adjudicators should exercise extraordinary circumspection and care in interpreting WTO obligations

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 4

We prefer bilateral consultations rather than using a “court” in an inter-governmental agreement context.
Question 5

Free trade agreements offer a better forum to resolve disputes

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 6

Has your country considered using arbitration instead of formal WTO dispute settlement procedures?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 7

Does the WTO need a mediation mechanism?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 8

My country does not launch disputes when other parties have larger interests at stake than we do

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 9

Panelists appointed to dispute settlement panels are objective and unbiased

(a) Whole sample
(b) Whole sample
(c) Organizations in high income countries
(d) Organizations in low and middle income countries
(e) Respondents involved in DS cases
(f) Respondents not involved in DS cases
Question 10

Should WTO panel reports be binding?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 11

Does the WTO need the Appellate Body to ensure coherent case law?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 12

Do you think that the Appellate Body has in fact provided coherent case law?

(a) Whole sample
(b) Whole sample
(c) Organizations in high income countries
(d) Organizations in low and middle income countries
(e) Respondents involved in DS cases
(f) Respondents not involved in DS cases
Question 13

Has the Appellate Body always acted consistently with the Dispute Settlement Understanding?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 14s1

Dispute settlement is valuable for legal clarification; to create a precedent

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 14s2

Dispute settlement is valuable for being alternative to negotiations

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 14s3

Dispute settlement is valuable for ensuring predictability

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Dispute settlement is valuable for enforcement of commitments

Question 14s4

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 14s5

Dispute settlement is valuable for punishing cheaters

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 14s6

Dispute settlement is valuable for securing a mutually acceptable solution

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 15

A compulsory and binding dispute settlement system that includes automatic adoption of reports is a necessary feature of the multilateral trade system.

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 16

When officials in capitals ask themselves whether a new policy is consistent with WTO rules, do they pay attention to Appellate Body rulings?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 17

Does your country’s WTO delegation or Trade ministry read WTO monitoring reports, or use the Global Trade Alert initiative to identify trade barriers affecting your country that might be the subject of a dispute, or a specific trade concern (STC)?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 18

Does your government provide analysis of other Members’ trade policy notifications that could lead to a question in a WTO committee?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 19

Disputes are irrelevant because conflicts are settled by the power of the bigger market

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 20

Dispute settlement is too expensive for my country

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 21

Dispute settlement is not relevant because we use alternative mechanisms

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 22

If you represent a country, who are the drivers of dispute settlement requests in your country?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 23

Our businesses are well-informed about foreign market access barriers

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 24

Our businesses complain to the trade ministry about foreign market access barriers

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 25

Our businesses do not know whether difficulties in market access are due to the policies of another government.

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 26

Do your WTO representatives intervene in Dispute Settlement Body (DSB) meetings?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 27s1

Your country does not intervene in DSB meetings because issues are of no interest

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 27s2

Your country does not intervene in DSB meetings because you rely on other delegations to raise your concerns

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 27s3

Your country does not intervene in DSB meetings because you participate in group proposals on dispute settlement matters

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 27s4

Your country does not intervene in DSB meetings because you have no capacity in Geneva or capital to generate a statement

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 28

Does your country only intervene in the DSB to address matters that directly affect its export interests?

**Whole sample**

- 72% No
- 28% Yes

**Organizations in high income countries**

- 67% No
- 33% Yes

**Organizations in low and middle income countries**

- 59% No
- 41% Yes

**Respondents involved in DS cases**

- 58% No
- 42% Yes

**Respondents not involved in DS cases**

- 37% No
Question 29

Do your country’s DSB interventions address broad systemic issues?

(a) Whole sample
(b) Whole sample
(c) Organizations in high income countries
(d) Organizations in low and middle income countries
(e) Respondents involved in DS cases
(f) Respondents not involved in DS cases
Question 30

Are panel reports sometimes biased?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 31

Do you think that Appellate Body reports are written by the Secretariat?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 32

Should there be a page limit for Appellate Body reports?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 33

Should there be page limits on submissions by WTO Members in appeals procedures?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
Question 34

Would making available the possibility of award of monetary damages, enforceable in domestic courts, enhance interest in participating in WTO dispute settlement?

(a) Whole sample

(b) Whole sample

(c) Organizations in high income countries

(d) Organizations in low and middle income countries

(e) Respondents involved in DS cases

(f) Respondents not involved in DS cases
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