

UN Human Rights Body Criticises WTO Dispute Settlement Procedures

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In a report issued at its 53rd Annual Session (30 July - 17 August), the UN Subcommission on Promotion and Protection of Human Rights concluded that the WTO's dispute settlement procedure is in flagrant violation of basic legal tenets such as equal access to justice, impartiality and independence. In separate resolutions on globalisation, services liberalisation, and intellectual property rights (IPR), the UN body also called upon the WTO and its Members to take human rights implications of globalisation more into consideration, particularly when convening for the Doha Ministerial in November this year.

In its report (E/CN.4/Sub.2/2001/10) the Subcommission elaborates that, as of March 2001, out of 228 complaints submitted to the Dispute Settlement Body (DSB) only 59 came from developing countries, while Least-Developed Countries had not submitted any complaints. According to the report, these figures "reveal the reality that it is the developed countries that are the main stakeholders and protagonists in the trade arena." This is supported by the "current tendency to appoint government officials, including diplomatic representatives of Members serving in Geneva, as panelists". This is seen as "a serious flaw that gravely erodes the credibility of the DSB" because these government officials tended to be from developed countries as only those governments generally had the resources to pay the appointed officials. Furthermore, the report states that appointing government personnel to a judicial body violates fundamental principles of natural justice and division of power.

With a view to transparency the report goes on to criticise that panel hearings are principally closed and that the opinions expressed by individual panelists are anonymous. Regarding equal legal access, the report argues that due to high costs of specialised international law firms the poorest countries are de facto blocked from making use of the DS regime at the WTO. Although Article 27.2 requests the WTO Secretariat to provide legal advice to developing countries involved in a dispute, the report regards this assistance as inadequate since "providing such services is at odds with the requirement of neutrality of the WTO staff". These services are also only available after a dispute has arisen, but not beforehand. Therefore, the paper concludes, a "neutral scheme providing 'legal aid'

and technical know-how has to be made available" for developing countries.

A WTO official responded to this criticism by saying that upon request by a developing country party to a dispute with a developed country, at least one of the generally three panelists will be from a developing country - as provided by the Dispute Settlement Understanding (DSU) Article 8.10. Regarding the imbalance between developed and developing countries' submissions of complaints the official pointed to the fact that there was also a corresponding disparity in the two camps' participation in world trade.

TRIPs/GATS and human rights

The Subcommittee reiterated that the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) is in conflict with other basic rights such as the right to self-determination, food, housing, work, health, education, as well as technology transfer to developing countries. Moreover, the Subcommittee stressed the need to protect traditional knowledge, cultural values of indigenous people, in particular against 'bio-piracy' and reduced access for indigenous people to their own genetic, natural, and cultural values.

Regarding the General Agreement on Trade in Services (GATS), the Subcommittee emphasised the importance of the "availability, accessibility, acceptability and quality of basic services" such as medical services, education, and other social services. The UN body thus called upon WTO Members to integrate human rights considerations in their domestic IPR legislation and to ensure -- particularly in the context of the forthcoming November Ministerial -- that the implementation of the TRIPs and GATS Agreements at the WTO did not negatively affect the "enjoyment of human rights".

In addition, the Subcommittee requested the UN Human Rights High Commissioner to seek observer status with the WTO TRIPs and Services Councils.

[Read the Subcommittee's documents](#)

"Developing Countries: WTO Challenges UN Subcommittee Report On Dispute Settlement Panels, TRIPs Accord," WTO REPORTER, 10 August 2001.

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