

# From GATT to WTO: The Legalization of Compliance Procedures in Trade Dispute Settlement \*

Guang Ma \*\* & Jiang Li \*\*\*

---

From the twentieth century on, legalization process has been evident in international relations. As a core issue of international law and relation, dispute settlement between States has been evolving from its tit-for-tat strategy to diplomatic and then legal control. Based on the GATT DSP, the WTO DSM has achieved significant progress in legalization. In particular, as more DSM decision have been complied by member States, legalization process of trade dispute resolution via WTO is regarded promising. From the viewpoint of the legalization theory, in comparison to the GATT, the compliance of the WTO DSM's decisions have become more precise. The WTO members have granted more authorities to its panel of the AB or DSB. It means that in the aspect of compliance of the WTO DSM's decisions, the degree of delegation to the DSB has been lifted to a higher level.

**Keywords:** WTO DSM, GATT DSP, Compliance, Legalization, Precision, Obligation, Delegation.

---

\* 'Compliance procedures' under GATT or WTO not only includes the legislative, judicial or administrative actions of the contracting parties or members to comply with the recommendations and rulings of the panel, working party, or the Appellate Body, but also involves the following procedures when the recommendations and rulings are not followed by the concerning contracting parties or members. The "trade dispute settlement system" is defined as a substitute for the legal framework governing trade dispute settlement under the GATT Dispute Settlement Procedures and the WTO Dispute Settlement Mechanism.

\*\* Associate Professor of Law at Zhejiang University Guanghua Law School. LL.B. (CUPL), LL.M. / Ph. D.(Korea Univ.) <http://orcid.org/0000-0002-0548-8450> The author may be contacted at: [hobright@163.com](mailto:hobright@163.com)

\*\*\* A postgraduate of international law department at Zhejiang University Guanghua Law School. <http://orcid.org/0000-0003-1234-4903> The author may be contacted at: [lijiangjiang@163.com](mailto:lijiangjiang@163.com)

## I. INTRODUCTION

Peaceful settlement of dispute is a highly topical issue of international legal studies. Today, disputes arising among sovereign States should be settled by neutral, impartial and technical judicial measures, called international dispute settlement mechanisms (“IDSMS”).<sup>1</sup> It may be described as the “movement of legalization.”<sup>2</sup>

In the course of ‘legalization,’ - judicialization<sup>3</sup> on the issue of dispute settlement, or even a form of institutionalization<sup>4</sup> - the members of the international community such as sovereign States and Non-State Actors (“NSAs”) have tried to seek mutually accepted solutions governing dispute settlement in a precise manner. Nonetheless, the international disputes are not often legalized mainly because each State tends to avoid judicial settlement when the dispute may seriously impair its core national interests.<sup>5</sup> Thus, ‘compliance’ is always a very critical momentum to the legalization of the international society.<sup>6</sup>

One of the noticeable examples in the compliance of IDSMS is the course evolving from the General Agreement on Tariffs and Trade (“GATT”) dispute settlement procedures (“DSP”) to the World Trade Organization (“WTO”) dispute settlement mechanism (“DSM”). At this turning point, the international community has installed the ‘teeth’ for compliance such as the ‘retaliation,’ ‘judicialization’ or fundamental ‘conversion’ of instruments leading to the resolution of international trade disputes with solid and strong aegis; it changes the way domestic-level political process approaches concerning trade policies.<sup>7</sup> Dichotomous discrepancies can be found between the GATT DSP and the WTO DSM; the former purports to restore the “balance of concessions” of the contracting parties, while the latter commits itself to induce compliance with the obligations therein.<sup>8</sup> It can be inferred that the legalization of compliance procedures serves as an imperative comprising the cornerstone of providing security and predictability for the multilateral trading system. In this case, the members could have more confidence and expectation so that the obligations should be conducted under the cooperative legal framework and thus the defaults are supposed to be redressed. Actually, the WTO DSM can be conducted effectively and legitimately on the basis of ‘compliance’ by the members.<sup>9</sup> The purpose of invoking the system is to seek ultimate solutions which could be realized by shielding the