



THE PRINCIPLE OF CONSENT AND COMPULSORY JURISDICTION IN THE WTO DISPUTE SETTLEMENT SYSTEM

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ABSTRACT

In 1995, the World Trade Organization was established as the successor to the General Agreement on Tariffs and Trade, marking one of the most significant developments in the field of international economic law. Its jurisdictional scope and powers — particularly its authority to address non-trade issues, its relationship with other international legal systems, and the effectiveness of its dispute settlement mechanisms — have generated intense academic debate.

In 1995, the **World Trade Organization** was established as the successor to the **General Agreement on Tariffs and Trade**, marking one of the most significant developments in the field of international economic law¹. Its jurisdictional scope and powers — particularly its authority to address non-trade issues, its relationship with other international legal systems, and the effectiveness of its dispute settlement mechanisms — have generated intense academic debate.

This article examines the multifaceted jurisdiction of the WTO from different scholarly perspectives. Although the primary function of the WTO is to liberalize and regulate trade, questions regarding the precise scope of its powers remain. This issue has become increasingly relevant as international trade increasingly intersects with environmental protection, labor standards, human rights, and public health concerns.

The jurisdiction of the WTO is primarily defined by its constituent instruments, collectively referred to as the “covered agreements”². These include the Marrakesh Agreement Establishing the WTO and its annexed multilateral trade agreements, as well as the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

The scope and legal status of the WTO are clearly set out in Article II of the Marrakesh Agreement. This provision establishes the WTO as the common institutional framework for trade relations among its Members and explains which agreements form an integral part of

¹ World Trade Organization. (n.d.). *History of the multilateral trading system*. World Trade Organization. https://www.wto.org/english/thewto_e/history_e/history_e.htm

² Pauwelyn, J., Trachtman, J. P., & Steger, D. P. (2004). [The Jurisdiction of the WTO is Limited to Trade]. *Proceedings of the Annual Meeting (American Society of International Law)*, 98, 135–146. <http://www.jstor.org/stable/25659908>

the WTO Agreement. It also lists the various trade agreements binding upon Members. Pursuant to this Article, upon accession to the WTO, each Member automatically becomes a party to the 24 agreements and legal instruments contained in Annexes 1, 2, and 3, commonly referred to as the “covered agreements”³. However, certain agreements listed in Annex 4 — known as plurilateral trade agreements — apply only to those WTO Members that have accepted them⁴.

Van den Bossche and Zdouc propose a more formal interpretation. According to them, WTO jurisdiction is clearly defined in Article 1 of the DSU, which limits its authority exclusively to disputes arising under the “covered agreements”⁵. WTO Panels and the Appellate Body have jurisdiction only over disputes relating to WTO agreements. In other words, as scholars such as Palmeter, Mavroidis, and Meagher argue, the WTO possesses jurisdiction *ratione materiae* only with respect to matters arising under the agreements listed below⁶.

Annex 1A of the Marrakesh Agreement, relating to Trade in Goods, includes:
The General Agreement on Tariffs and Trade 1994 (GATT 1994);
The Agreement on Agriculture;
The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS);
The Agreement on Technical Barriers to Trade (TBT);
The Anti-Dumping Agreement;
The Agreement on Customs Valuation;
The Agreement on Import Licensing Procedures;
The Agreement on Rules of Origin;
The Agreement on Subsidies and Countervailing Measures (SCM Agreement);
The Agreement on Safeguards.

In addition, disputes arising under Annex 1B (the General Agreement on Trade in Services — GATS) and Annex 1C (the Agreement on Trade-Related Aspects of Intellectual Property Rights — TRIPS) are also governed directly by the DSU.

Although the DSU covers a number of multilateral agreements, it does not apply to certain WTO-related instruments. For example, Annex 3 of the Marrakesh Agreement — the Trade Policy Review Mechanism (TPRM) — is a transparency instrument designed to ensure that national trade policies conform to WTO obligations⁷. It is not legally binding and does not contain a dispute settlement mechanism. Therefore, matters arising under the TPRM cannot be adjudicated under the DSU.

³ World Trade Organization. (1994). *Agreement establishing the World Trade Organization*. https://www.wto.org/english/docs_e/legal_e/04-wto.pdf

⁴ LexisNexis. *An introduction to plurilateral agreements of the WTO*. LexisNexis UK. <https://www.lexisnexis.co.uk/legal/guidance/an-introduction-to-plurilateral-agreements-of-the-wto>

⁵ Van den Bossche, P., & Zdouc, W. (2017). *The law and policy of the World Trade Organization: Text, cases and materials* (4th ed.). Cambridge University Press. <https://doi.org/10.1017/9781316662496>

⁶ Palmeter, D., Mavroidis, P. C., & Meagher, N. (2022). Jurisdiction. In *Dispute Settlement in the World Trade Organization* (pp. 40–85). chapter, Cambridge: Cambridge University Press.

⁷ World Trade Organization. (n.d.). *The Trade Policy Review Mechanism (TPRM)*. World Trade Organization. https://www.wto.org/english/tratop_e/tpr_e/tprm_e.htm

With respect to the plurilateral trade agreements listed in Annex 4 of the Marrakesh Agreement, the DSU does not apply automatically. These agreements do not bind all WTO Members and are accepted only by certain Members. They include:

The Agreement on Government Procurement (GPA);

The Agreement on Trade in Civil Aircraft.

For these agreements, the DSU applies only if the agreement itself expressly refers to the DSU, and only among the parties to that agreement. For example, Article XXII of the GPA 2012 explicitly provides that disputes between parties to the Agreement may be resolved through DSU procedures.

The application of WTO dispute settlement procedures to such specific agreements must take into account the special or additional rules set out in Appendix 2 of the DSU. For instance, the Agreement on Textiles and Clothing established a special preliminary dispute settlement procedure⁸, whereby disputes were first examined by the Textiles Monitoring Body before being referred to the Dispute Settlement Body if unresolved.

In cases where there is a conflict between the general provisions of the DSU and the special or additional rules contained in Appendix 2, the special rules prevail⁹. This principle was confirmed in the case of **Guatemala—Anti-Dumping Investigation regarding Portland Cement from Mexico**, where the Appellate Body held that when the application of a general dispute settlement provision conflicts with a specific procedural rule, the specific rule takes precedence¹⁰.

Ministerial declarations or decisions adopted at WTO Ministerial Conferences, if not incorporated into the relevant agreements, generally do not create legally binding obligations. Accordingly, unless otherwise specified, they are not subject to the DSU. The jurisdiction of the WTO dispute settlement mechanism is defined in the DSU and is limited to disputes arising under the WTO's "covered agreements." However, with respect to the plurilateral agreements listed in Annex 4 of the Marrakesh Agreement, the dispute settlement mechanism does not apply automatically; rather, it operates in accordance with the specific provisions of those agreements.

According to P. V. Van den Bossche and W. Zdouc, a distinctive feature of the World Trade Organization is its compulsory jurisdiction in dispute settlement. W. Davey describes this as "one of the most important reforms in international economic law"¹¹.

Whereas many international arbitration mechanisms require separate consent for each individual dispute, WTO Members have given their prior consent to the Organization's dispute settlement jurisdiction as a condition of membership.

Thus, the WTO dispute settlement system is inherently compulsory in nature. When a case is initiated against a Member State, the respondent Member has no option but to accept the jurisdiction of the WTO system. Unlike other international dispute settlement mechanisms,

⁸ **World Trade Organization.** *Agreement on Textiles and Clothing*. In WTO legal texts. Retrieved June 20, 2025, from https://www.wto.org/english/docs_e/legal_e/16-tex_e.htm

⁹ **World Trade Organization.** *Agreement on Textiles and Clothing*. In WTO legal texts. Retrieved June 20, 2025, from https://www.wto.org/english/docs_e/legal_e/16-tex_e.htm

¹⁰ **World Trade Organization.** *DS60: Guatemala — Anti-Dumping Investigation Regarding Portland Cement from Mexico*. Retrieved June 20, 2025, from https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds60_e.htm

¹¹ Davey, W. J. (2014). The WTO and rules-based dispute settlement: Historical evolution, operational success, and future challenges. *Journal of International Economic Law*, 17(3), 679–700. <https://doi.org/10.1093/jiel/jgu027>

the WTO system does not require the parties to conclude a separate agreement or special compromise in order to accept jurisdiction. Membership in the WTO automatically entails consent to, and acceptance of, the jurisdiction of its dispute settlement system.

J. Pauwelyn emphasizes that “such compulsory jurisdiction, together with the rule of automatic adoption of rulings, creates a uniquely strong international judicial system”¹².

Continuing their analysis, P. V. Van den Bossche and W. Zdouc argue that the World Trade Organization dispute settlement system possesses exclusive jurisdiction. Article 23.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) provides that when Members seek the redress of a violation of obligations, nullification or impairment of benefits under the covered agreements, or an impediment to the attainment of the objectives of the covered agreements, they must have recourse to, and abide by, the rules and procedures of the DSU¹³.

Under this provision, a complaining party is required to submit any dispute arising under the WTO “covered agreements” to the WTO dispute settlement system. Article 23.1 of the DSU obliges all Members, in cases of alleged violations of WTO rules, to have recourse to the multilateral dispute settlement procedures established under the DSU. In such circumstances, Members must resort exclusively to the WTO dispute settlement mechanism, thereby excluding any other system, including unilateral measures for the enforcement of WTO rights and obligations¹⁴.

Thus, based on an analysis of scholarly views concerning the jurisdiction of the **World Trade Organization** dispute settlement mechanism, it may be concluded that WTO jurisdiction consists of the following four constituent elements:

1/Ratione materiae – subject-matter jurisdiction, i.e., the scope of issues that the WTO Dispute Settlement Body is competent to examine (the “covered agreements”);

2/Ratione loci – territorial jurisdiction, meaning the application of WTO rules within the territories of Member States;

3/Ratione personae – personal jurisdiction, referring to the entities entitled to be parties to a dispute (WTO Members);

Personae voluntatis – jurisdiction based on the will of the parties, that is, the consent of WTO Members to submit disputes to the dispute settlement system (consent being given through the signature and acceptance of the constituent treaties).

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¹² Pauwelyn, J. (2016). The WTO 20 years on: ‘Global governance by judiciary’ or, rather, member-driven settlement of (some) trade disputes between (some) WTO members? *European Journal of International Law*, 27(4), 1119–1126. Available at SSRN: <https://ssrn.com/abstract=2864413>

¹³ Jackson, J. H. (1997). The WTO Dispute Settlement Understanding--Misunderstandings on the Nature of Legal Obligation. *The American Journal of International Law*, 91(1), 60–64. <https://doi.org/10.2307/2954140>

¹⁴ WTO Panel Report. (2000). *United States – Sections 301–310 of the Trade Act of 1974*, WT/DS152/R, para. 7.43. Retrieved from https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds152_e.htm

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