

# G2 HACKATHON CHALLENGE

How to Make the WTO  
Fit for Future Trade



INSTITUTE OF INTERNATIONAL  
ECONOMIC LAW  
GEORGETOWN UNIVERSITY LAW CENTER



Geneva Trade  
Platform

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# 2021 Hackathon Submission

## Trade Remedy Dispute Settlement Mechanism

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**Watch the Video**



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### Question #1

Define the substantive issue that your team is addressing, why it's a problem, and why your team believes the WTO is the right forum to address it.

Trade remedies (countermeasures against dumped, subsidized, or increased imports) have been the most frequently utilized policy tools by the WTO Members to address the adverse effects of trade liberalization. More than half of the WTO panels and Appellate Body (AB) reports are related to trade remedies. Additionally, the Members initiate hundreds of investigations each year.

Developing countries have long-standing concerns regarding the application of trade remedies and the possibility to challenge the respective measures in the WTO (lengthy and costly procedure). In contrast, developed countries led by the United States (US) have raised major concerns on trade remedy rules (and their narrow interpretations) some of which led to the blockage of appointment of the AB members. Leaving aside the accurateness or fairness of criticism against the AB's jurisprudence, it is evident that the AB would not be revived in the absence of substantial changes in the agreements. However, any negotiation would require concession from these two poles.

Members could seek to establish a stronger dispute settlement mechanism (DSM) for trade remedies by involving private entities (PEs) to initiate disputes. In our view, this system could also employ financial compensation mechanism. However, due to historical opposition of certain members to financial compensation, we propose to initiate Trade Remedy Dispute Settlement (TRDS) with two disjunctive pillars that envisage (i) to grant direct access to PEs to the WTO dispute settlement and (ii) establish a compensation mechanism. TRDS could be implemented as a plurilateral agreement, which would have a high chance of becoming a multilateral deal by the spill-over effect mentioned in answer to the question No 3.

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Such a system could also employ tools to ensure compliance and enforcement of decisions by establishing a fund at the WTO. The fund could make payments to PEs only if the Member that it operates in fulfills its obligations in other disputes.

Allowing PEs to initiate disputes against Members would:

- Compensate the actual welfare losses suffered by PEs instead of leaving their states without any compensation or in best case scenario, with an inefficient retaliation, as in the DSU;
- Deter violations in the first place with a stronger DSM;
- Enable removal of WTO – inconsistent measures effectively in favor of all concerned stakeholders;
- Significantly decrease the political and economic costs to Members as well as the duration of disputes due to shorter proceedings;
- Depoliticize the current DSM.

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### Question #2

Propose a specific treaty text, or more informal commitment/declaration text, that addresses either the concern or a particular, detailed aspect of it.

Statement on Mechanism for Trade Remedy Dispute Settlement (TRDS)

The Members of the World Trade Organization (WTO) that endorse this proposal,

Acknowledge that prompt and effective settlement of trade remedy disputes is essential to the continued well-functioning of the multilateral trading system and further acknowledge the successful contribution of the WTO dispute settlement system to the security and predictability of the multilateral trading system;

Mindful of the challenges faced by developing and least-developing countries when settling trade remedy disputes;

Intend to directly involve private entities (PEs) in TRDS, a mechanism aiming to settle the disputes between PEs and WTO Members and employing a financial compensation;

Ensure the reduction of WTO inconsistent measures and induce compliance in the field of trade remedies;

Note that this system shall operate on an opt-in basis and as a complement to the currently existing WTO dispute settlement mechanism.

The Members agree to:

- a. Establish a TRDS Mechanism allowing PEs to initiate disputes against WTO Members that impose anti-dumping, countervailing, or safeguard measures under the WTO covered agreements;
- b. Consider creating a compensation mechanism to manage and facilitate payments by the WTO Members to PEs to ensure compliance and enforcement of TRDS decisions.



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### Question #3

Suggest a legal/technical or institutional way to implement your textual proposal within the broader WTO framework (500 words)

#### Jurisdiction of TRDS

1. TRDS covers the disputes between a WTO Member and a PE from another Member concerning an anti-dumping, countervailing, or safeguard measure imposed within the context of relevant WTO covered agreements.
2. PE means any producer or exporter of the products covered by anti-dumping, countervailing, or safeguard measures.

#### TRDS Procedures

3. In general, TRDS procedures will follow the procedures established in the DSU, except provided otherwise in the TRDS; such as, adoption by the Dispute Settlement Body (DSB), appeal, compliance, and retaliation procedures. The WTO Members will further agree upon the procedural rules (such as a statute of limitation or a right to bring a claim) to limit the number of disputes that can be initiated by PEs. ,

#### TRDS Adjudicating Body

4. TRDS envisages the creation of a standing body consisting of 15 panelists, appointed by consensus of the participating Members.
5. Disputes will be carried out by three panelists (the Panel) selected from the pool of 15 standing panelists.

#### Decisions of the Panel

6. Where the Panel concludes that a measure is inconsistent with a covered agreement, it will recommend that the Member concerned brings the measure into conformity with that agreement.

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7. Depending on the political will of the Members during the TRDS negotiations, it can also recommend that the losing Member must return the amount of duty paid and/or compensate the direct losses resulting from measures.
8. The decisions of the Panel should be binding on the parties and not be subject to DSB adoption or appeal.

### Compensation Mechanism

9. If the compensation mechanism is employed, a fund can be created under the auspices of the WTO. The Fund will receive payments from the WTO Members and distribute them to PEs.
10. The Fund will make payments to PEs only if the Member that it operates in fulfills its obligations in other disputes. In this regard, the Member must bring the WTO-inconsistent measure into conformity with the WTO covered agreements and pay compensation. Such structure will ensure compliance with and enforcement of decisions.

### Way Forward

Even though TRDS is initially designed as a plurilateral agreement, it could become a multilateral agreement. If TRDS is to be enacted between industrialized developing countries where non-TRDS parties' trade interests lie, it could force reluctant Members to join afterward due to internal lobbying that will build up over time. For example, if Members A and B join TRDS while Member C stays outside, and Member A applies WTO inconsistent measures to certain products originating from both Members B and C, exporters of Member B will enjoy an effective and prompt dispute resolution and an opportunity to obtain compensation. On the other hand, the exporters of Member C will have to lobby and, without any compensation, wait for years to just go back to the status quo before the WTO – inconsistent measure was implemented.