Article 17.6 of the Anti-Dumping Agreement: A Boon or a Bane in the Functioning of WTO Panels?

Dr. Sandeepa Bhat B.[1]

Abstract

The determination of the standard of review to be applied in World Trade Organization (WTO) for dispute settlement is a matter of significant concern in anti-dumping cases. Article 17.6 of the Anti-Dumping Agreement seems to limit the scope of review to the determination of element of bias and objectivity in the findings of facts by the national authorities. Moreover, if any provision of the Anti-Dumping Agreement is capable of having more than one meaning under the customary rules of interpretation, the adjudicating bodies should not find the interpretation of the national authorities as incorrect if it fits within the ambit of one of the permissible interpretations. Hence, the scope of review by the WTO dispute settlement bodies is argued to be limited under the provision (deference approach). However, on the contrary, it is argued that such a limitation would go against the higher norm of objective assessment by the WTO panels under the mandate of Article 11 of the Dispute Settlement Understanding (DSU). In light of this, a case for a de novo approach is also argued by a section of scholars. Unfortunately, the approach of the WTO adjudicating bodies in this regard is not consistent. While in some cases, strict adherence to deference review is made under Article 17.6 of the Anti-Dumping Agreement, this rule is diluted in other cases. Hence, there is a need to bring clarity on the approach to be adopted at the WTO level in reviewing anti-dumping cases.

Keywords: Assessment of Facts, Deference, *De Novo*, Interpretation of Laws, Objective Assessment.

1.0 Introduction

The WTO dispute settlement mechanism provides the platform as well as the most significant forum for the settlement of trade disputes in the international level. Its compulsory jurisdiction over the disputes, application of the rule of law, binding decisions and strict implementation

[1] The Author is a Professor of Law & Director of Centre for Aviation and Space Laws at The WB National University of Juridical Sciences located at Kolkata, West Bengal, India. He can be reached at sandeep_nls@yahoo.com

procedure provide credibility to the entire WTO regime.[2] Hence, the WTO dispute settlement mechanism is hailed as the 'jewel in the crown'[3] of the WTO. Though there have been unprecedented challenges[4] and deadlocks[5] in the recent past leading to the argument of 'cracks in the crown jewel',[6] undoubtedly the WTO dispute settlement mechanism has been one of the most successful mechanisms at the international level.[7] The DSU,[8] which is the result of the Uruguay Round of Multilateral Trade Negotiations,[9] provides a detailed framework for WTO dispute settlement. However, understandably it has its own limitations in addressing every minute aspect of dispute resolution.

Since the establishment of the WTO Dispute Settlement Body (DSB), the world has witnessed norms (though not binding) being created on the grey areas of the DSU in different cases. One such grey area is the applicable standard of review in WTO adjudications. The standard of review that is spoken of at the WTO dispute settlement level is different from the one that we speak of at municipal levels. It is not the review of the decisions of the lower court by the higher appellate court (as we see in the municipal levels), but it is the review of the decisions or policies of national authorities by the WTO dispute settlement bodies (WTO panel and the Appellate Body).[10] This necessarily involves the question on the depth and

---

2 Mitsuo Matsushita and others, *The World Trade Organization: Law, Practice, and Policy* (2nd edn, Oxford University Press 2006) 104.

3 Alan Wm. Wolff, 'Reflections on WTO Dispute Settlement' (1998) 32 (3) The International Lawyer 951.

4 While presenting the Appellate Body's Annual Report on June 22, 2018, the Appellate Body Chair, Mr. Ujal Singh Bhatia, remarked that the Appellate Body is currently facing 'unprecedented challenges'. *See Unprecedented Challenges Confront Appellate Body, Chair Warns*, WTO (June 22, 2018) <www.wto.org/english/news_e/news18_e/ab_22jun18_e.htm> accessed 12 December 2020.

5 The United States has blocked the appointment of judges to the WTO Appellate Body, which has paralysed its functioning. *See* Tom Miles, *U.S. Blocks WTO Judge Reappointment as Dispute Settlement Crisis Looms*, REUTERS (August 27, 2018) <www.reuters.com/article/us-usa-trade-wto/u-s-blocks-wto-judge-reappointment-as-dispute-settlement-crisis-looms-idUSKCN1LC19O> accessed 12 December 2020.

6 *See* Jayant Raghu Ram, 'Cracks in the 'Crown Jewel' — Whither 'Prompt Settlement' of WTO Disputes?' (2018) 10 (2) Trade Law & Development 302; *See also* Petros C. Mavroidis, 'Raiders of the Lost Jewel (in the Crown)' (2015) 14 (3) Journal of International Trade Law & Policy 106–111.

7 Over 350 rulings have been made by the WTO DSB since its establishment. *See* Dispute Settlement, WTO <www.wto.org/english/tratop_e/dispu_e/dispu_e.htm> accessed 12 December 2020.

8 Understanding on Rules and Procedures Governing the Settlement of Disputes, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401 [hereinafter DSU].

9 Legal Texts: The WTO Agreements, World Trade Organization <www.wto.org/english/docs_e/legal_e/ursum_e.htm#Understanding> accessed 12 December 2020.

10 Matthias Oesch, 'Standards of Review in WTO Dispute Resolution' (2003) 6 (3) Journal of International Economic Law 635, 637.

intensity of interference with the national policy determinations of the States by the WTO dispute settlement bodies.[11] Since the Appellate Body has the mandate to undertake limited review, which is confined to 'issues of law covered in the panel report and legal interpretations developed by the panel',[12] the question of standard of review to be adopted by the Appellate Body is less complicated. However, the review of decisions and policies of national authorities by the WTO panel is a matter of considerable complexity, more so in anti-dumping cases in the presence of Article 17.6 of the Anti-Dumping Agreement[13]. Therefore, the scope of this article is confined to the review of national authorities' decisions and policies at the WTO panel level, primarily under the Anti-Dumping Agreement.

Currently the world is witnessing unprecedented developments in the wake of Covid-19. Indispensible measures taken to protect the public health have resulted in serious damage to the economy of all countries. Given the current scenario, States are busy with plans to recover and strengthen their economy. This invariably involves the protection of domestic industry by resorting to all possible trade restrictive measures. Anti-dumping measures are expected to be one of the major ways to achieve this goal. This would result in increasing disputes under the Anti-Dumping Agreement, which need to be resolved by the WTO adjudicating bodies. Hence, clarity with respect to the standard of review to be adopted under the Anti-Dumping Agreement is going to be most significant in the post Covid-19 era.

2.0 The WTO Panel and Its Mandate under the DSU

The DSU provides for the panel as the forum having original jurisdiction to make findings on any dispute. Since the purpose of the DSU is not to provide a remedy to a party to the dispute at the cost of trade relations between the parties to the dispute,[14] the dispute settlement procedure begins with a non-adversarial mechanism of mandatory consultations between the parties.[15] Only upon failure of consultation, can the parties

---

11 Matthias Oesch, *Standards of Review in WTO Dispute Resolution* (Oxford University Press 2005) 13.

12 DSU (n 8) art 17.6.

13 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201 [hereinafter Anti-Dumping Agreement].

14 ibid, art 3.7. It states that, 'A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred'. This is primarily to ensure that the resolution of trade disputes in an adversarial manner should not result in distorting the future trade relations among the disputing parties.

15 ibid, art 4.

approach the DSB for the establishment of a panel. Meanwhile, other non-adversarial methods of dispute settlement, such as good offices, conciliation and mediation can be employed by the parties to amicably settle their disputes.[16] Carrying forward the objective of amicable settlement, the panel also assists the parties to develop a mutually satisfactory solution to the dispute.[17] Only if all attempts towards amicable settlement of disputes fail should the panel proceed with making its findings by applying and interpreting the relevant law.

In the process of arriving at a conclusion, the panel can meet the parties,[18] seek necessary information from any individual or body[19] and also consult experts.[20] The most significant aspect of the panel proceedings is provided under the mandate of Article 11 of the DSU, which states as follows:

> The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel 'should make an objective assessment' (emphasis added) of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

The above provision makes it clear that the purpose of panels is to assist the DSB to arrive at a conclusion to settle disputes. While performing its duties, the panel needs to conduct an objective assessment of the entire case before it. It is argued that, 'the term 'objective assessment' speaks more obviously to the fairness, impartiality, and even-handedness of panels' examination than to the discretion that they must afford to domestic decision-makers'.[21] This requirement of objective assessment is not just a formality but a mandate of the panel.[22] The Appellate Body in *Canada — Aircraft*[23] elaborated upon this mandatory obligation of the

---

16 ibid, art 5.

17 ibid, art 12.7.

18 ibid, arts 12 & 15.

19 ibid, art 13.1.

20 ibid, art 13.2.

21 Jan Bohanes and Nicolas Lockhart, 'Standard of Review in WTO Law' in Daniel Bethlehem and others (eds), *The Oxford Handbook of International Trade Law* (OUP 2009) 378, 383.

22 Appellate Body Report, EC — Measures Concerning Meat and Meat Products (Hormones), ¶133, WTO Docs. WT/DS26/AB/R & WT/DS48/AB/R (adopted January 16, 1998).

23 Appellate Body Report, *Canada — Measures Affecting the Export of Civilian Aircraft*, WTO Doc. WT/DS70/AB/R (adopted August 2, 1999).

panel by referring to the Concise Oxford English Dictionary and noting that 'should' ordinarily implies 'duty' or 'obligation'. According to the Appellate Body:

> Although the word 'should' is often used colloquially to imply an exhortation, or to state a preference, it is not always used in those ways. It can also be used 'to express a duty [or] obligation'. The word 'should' has, for instance, previously been interpreted by us as expressing a 'duty' of panels in the context of Article 11 of the DSU.[24]

Hence, use of the term 'should' under Article 11 makes the provision normative and not merely exhortative in nature. In simple terms, it operates as a mandate on the panel throughout the process of dispute settlement. However, the practical implication of this mandate may vary under different WTO agreements, and therefore, the intensity of panels' assessment is not always the same.[25] A common line that cuts across the panels' assessment under different WTO agreements is the need for striking a balance between the legitimate sovereign interests of the individual State and common interest of all WTO members in achieving the goal of trade liberalisation through uniform interpretation and consistent application of the WTO law.

The objective assessment, as stipulated under Article 11, needs to be done with respect to the facts of the case, applicable law under the WTO regime and the consistency of trade measures with the relevant WTO agreements. There is also an obligation to make 'such other findings' to assist the DSB in arriving at the final conclusion. The Appellate Body in *Mexico — Taxes on Soft Drinks*[26] stated that, '[i]t is difficult to see how a panel would fulfil that obligation if it declined to exercise validly established jurisdiction and abstained from making any finding on the matter before it'. Therefore, it is a more comprehensive obligation on the panel to make an objective assessment on all aspects covered under Article 11.

3.0 Review under Article 17.6 of the Anti-Dumping Agreement

Anti-dumping measures are taken by States to counteract the effect of unfair trade of dumping. While anti-dumping measures are not per se prohibited under the WTO regime, they are regulated to avoid the unreasonable consequence of creating unnecessary obstacles to

---

24 ibid 187.

25 Bohanes & Lockhart (n 21) 384.

26 Appellate Body Report, *Mexico — Tax Measures on Soft Drinks and Other Beverages*, 51, WTO Doc. WT/DS308/AB/R (adopted March 6, 2006).

international trade in the guise of negating the effect of dumping. Article VI of the General Agreement on Tariffs and Trade (GATT),[27] read with Anti-Dumping Agreement, provides the detailed scheme of regulating anti-dumping measures. According to Article VI of the GATT, States can resort to anti-dumping measures only when there is sufficient proof of dumping, injury and causation. The proof of these factors needs to be done through investigation by the national authority specifically established for this purpose.[28] The Anti-Dumping Agreement also supplements the GATT by providing a detailed procedure for investigation and proof of relevant factors.

3.1 Deference v. De novo

With the adoption of a detailed procedure for investigation, States have experienced difficulties in resorting to anti-dumping measures. Even in the circumstances of completion of investigation and imposition of anti-dumping measures, States that are affected by anti-dumping measures have challenged such investigations as well as consequent measures taken before the WTO DSB.[29] The panels, which have the original jurisdiction to decide the WTO cases, always confront the dilemma as to the applicable standard of review in such cases. In the general domain of the WTO jurisprudence, a distinction is maintained between the deference review and the *de novo* review. The deference review is based on the argument that the WTO panels have very limited investigative powers under Article 13 of the DSU. Although they have a right to seek information, it is difficult for them to compel the compliance with a request made for furnishing information.[30] Given this limitation, they cannot effectively conduct the investigation, and therefore, they have to adhere to the findings of national authorities, unless they are apparently unreasonable. This argument is buttressed by the view that the WTO dispute settlement bodies sitting at Geneva cannot appreciate the local conditions prevailing in any country, which are the part of investigation. It is only the national investigating authorities, given their proximity and ready access to domestic conditions, which are competent to carry on the investigation.[31]

---

27 General Agreement on Tariffs and Trade 1994, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 [hereinafter GATT].

28 ibid, art VI : 6(a) read with Anti-Dumping Agreement (n 13) art 5.

29 Anti-Dumping Agreement (n 13) art 17.4. It specifically provides for reference to the DSB.

30 Raj Bhala, *International Trade Law - Interdisciplinary Theory and Practice* (3rd edn, LexisNexis 2014) 166.

31 Defendant State is in a better position to know its economy and the impact of imports on its economy. *See* Andrew T. Guzman, 'Determining the Appropriate Standard of Review in WTO Disputes' (2009) 42 (1) Cornell International Law Journal 45, 48.

Therefore, the WTO dispute settlement bodies should not substitute the determination of competent authorities with their decision.[32]

By contrast, the *de novo* review is argued on the premise that the exercise of investigative powers by the WTO adjudicating bodies is not explicitly prohibited in the WTO jurisprudence, and therefore, the findings of national authorities may be relooked and reversed.[33] Moreover, strict adherence to the deference standard would result in a piecemeal approach, wherein one body is investigating and another body is making the decision. Due to differences in background and mandate of national investigating authorities and WTO dispute settlement bodies, there is likely to be an absence of coordination and understanding, which might lead to a mismatch between findings of the investigation and the final decision. This indicates that mere procedural review through deference approach would fail, and substantive review might be required to supplement procedural review.[34] In addition, complete reliance on national authorities' determinations, which vary from country to country, would result in differing interpretations of the WTO obligations for different States. Hence, it is argued that without *de novo* review, it is not possible to bring uniformity and predictability to the WTO system.[35]

3.2 Article 17.6

The standard of review in anti-dumping cases is different from other cases under the WTO regime due to an explicit reference under Article 17.6 of the Anti-Dumping Agreement. This provision deals with the review process separately for 'assessment of facts' and 'interpretation of laws'. On the assessment of facts of the case, panel's determination is confined to find out whether proper determination of the facts was made by the national anti-dumping authorities as well as whether the authorities have evaluated such facts in an unbiased and objective manner. If the panel finds no fault in the above analysis, it is not entitled to overturn the evaluation of the national anti-dumping authorities, even if the panel might have reached a different conclusion.[36] Thus, the panel is prevented from second-guessing a determination made by the national authorities in an unbiased and objective manner.[37] This provision is also to be read in light

---

32 Matsushita and others (n 2) 129–131.

33 *See generally* Guzman (n 31) 48.

34 Tracey Epps, 'Recent Developments in WTO Jurisprudence: Has the Appellate Body Resolved the Issue of Appropriate Standard of Review in SPS Cases?' (2012) 62 (2) The University of Toronto Law Journal 201, 222.

35 Claus-Dieter Ehlermann and Nicholas Lockhart, 'Standard of Review in WTO Law' (2004) 7 (3) Journal of International Economic Law 491, 498.

36 Anti-Dumping Agreement, art 17.6(i).

of Article 17.5(ii) of the Anti-Dumping Agreement, which states that the panel has to examine the matter based upon 'the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member'.

On the interpretation of law, the panel is bound to interpret in accordance with the customary rules of interpretation of public international law.[38] This is in consonance with Article 3.2 of the DSU, and those customary rules are reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT) 1969.[39] If a legal provision is susceptible to more than one permissible interpretation, and the challenged measure of a State under the Anti-Dumping Agreement rests on one of those permissible interpretations, the panel is barred from holding it to be inconsistent with the Anti-Dumping Agreement by virtue of second sentence of Article 17.6(ii). Though there exists questions relating to the possibility of more than one permissible interpretation of treaty provisions by using Articles 31 and 32 of the VCLT and also the specific situations wherein the second sentence of Article 17.6(ii) can be invoked to accept a range of interpretations,[40] the WTO dispute settlement bodies have used the second sentence of Article 17.6(ii) in several cases.[41]

The standard of review under Article 17.6 of the Anti-Dumping Agreement is the result of the United States' insistence to protect national sovereignty in resorting to anti-dumping measures.[42] It strongly believed

---

37 Appellate Body Report, *Thailand — Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, ¶ 117, WTO Doc. WT/DS122/AB/R (adopted March 12, 2001).

38 Anti-Dumping Agreement, art 17.6(ii).

39 *See* Appellate Body Report, United States — Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, ¶ 57, WTO Doc. WT/DS184/AB/R (adopted July 24, 2001) [hereinafter US — Hot-Rolled Steel (ABR)]; *see also* Appellate Body Report, United States — Continued Existence and Application of Zeroing Methodology, ¶ 267, WTO Doc. WT/DS350/AB/R (adopted February 4, 2009) [hereinafter US — Continued Zeroing (ABR)].

40 *See* Steven P. Croley and John H. Jackson, 'WTO Dispute Procedures, Standard of Review, and Deference to National Governments' (1996) 90 (2) The American Journal of International Law 193, 201.

41 Reference can be made to *US — Hot-Rolled Steel* (ABR), (n 39); Appellate Body Report, *United States — Final Anti-Dumping Measures on Stainless Steel from Mexico*, WTO Doc. WT/DS344/AB/R (adopted April 30, 2008); *US — Continued Zeroing* (ABR), (n 39); and Panel Report, *United States — Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil*, WTO Doc. WT/DS382/R (adopted March 25, 2011).

42 The United States was unhappy with the overturning of its national authority's determinations by GATT panels in anti-dumping cases. Until 1994, it used the option of blocking adoption of certain panel reports at the GATT Council level. However, with the incorporation of negative consensus rule in the WTO dispute settlement mechanism, practically there was no scope for blocking the decisions during adoption of reports by the DSB. Hence, the United States attempted to restrict the review of anti-dumping measures by the WTO dispute settlement bodies.

that in the absence of some deference to the decisions of national investigating authorities, every anti-dumping measure would fail to receive the acceptance of the WTO adjudicating bodies. It was so adamant on its stand during the Uruguay Round of Multilateral Trade Negotiations (Uruguay Round) that non-acceptance was associated with the risk of failure of the entire trade negotiations. Hence, it was one of the prominent potential 'deal breakers' during the Uruguay Round.[43] Article 17.6 of the Anti-Dumping Agreement is heavily influenced by the United States' jurisprudence involving judicial deference to administrative actions, in the absence of clear statutory language to the contrary, if those actions were based on 'reasonable' interpretation of the relevant statute.[44] This is popularly known as Chevron deference[45], and is based on the argument that the judiciary has to respect the policy choice of the administration.

Though there were concerns associated with granting too much liberty to national authorities and possible varied standards of reasonableness, which may ultimately dilute the rigour of WTO commitments, the United States prevailed over others and was successful in introducing limitations on review under Article 17.6 of the Anti-Dumping Agreement. It also lobbied for introduction of a similar standard of review under other covered agreements, especially in the Agreement on Subsidies and Countervailing Measures, which shares common roots with the Anti-Dumping Agreement under Article VI of the GATT. This resulted in two Ministerial Decisions being taken at the final Ministerial Conference of the Uruguay Round in 1994. The first among them decided to review Article 17.6 of the Anti-Dumping Agreement 'after a period of three years with a view to considering the question of whether it is capable of general application'.[46] The second decision recognised 'the need for the consistent resolution of disputes arising from anti-dumping and countervailing duty measures'.[47]
The above developments indicate that the standard of review set forth under Article 17.6 of the Anti-Dumping Agreement is unique and not applicable to other covered agreements. In *US — Lead and Bismuth II*,[48]

See K D Raju, *World Trade Organization Agreement on Anti-dumping: A GATT/WTO and Indian Jurisprudence* (Kluwer Law International 2008) 155.

43 John H. Jackson, *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations* (Cambridge University Press 2007) 135.

44 ibid 141.

45 *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984).

46 *Decision on Review of Article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, WTO (April 15, 1994) <www.wto.org/english/docs_e/legal_e/40-dadp2_e.htm> accessed 17 December 2020.

47 *Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on Subsidies and Countervailing Measures*, WTO (April 15, 1994) <www.wto.org/ENGLISH/docs_e/legal_e/41-dadp3_e.htm> accessed 17 December 2020.

the Appellate Body went on to clarify expressly that the standard of review under Article 17.6 is also not applicable under the Agreement on Subsidies and Countervailing Measures, despite the aspects of anti-dumping and countervailing duties being addressed together under Article VI of the GATT. This unique standard of review in anti-dumping cases has fuelled the debate between the deference and the *de novo* review. While the limitations under Article 17.6 of the Anti-Dumping Agreement on the assessment of facts and interpretation of law are considered as the basis for the deference approach in reviewing the national authorities' determinations,[49] the mandate of the panel under Article 11 of the DSU to make an objective assessment is argued as the basis for a *de novo* review.[50] Since the obligation of 'objective assessment' may not be discharged by simply adhering to deference approach in all cases, the supporters of the *de novo* approach are of the view that the WTO adjudicating bodies may play a more active role and use evidences that were not before the national authorities.[51]

4.0 Practical Scenario: Complete Deference or a Step Beyond?

Coming to the practical scenario, we can observe that the WTO dispute settlement bodies are not consistent in their approach in dealing with the issue of the standard of review under the Anti-Dumping Agreement. While some of the cases reflect the strict adherence to the deference approach, others indicate the departure from it. Hence, the following part of this article attempts to substantiate the confusion created by differing standards of review applied by the WTO adjudicating bodies.

4.1 Classic Cases of Deference

In both *Guatemala — Cement II*[52] and *US — Hot-Rolled Steel*[53], the Panel desisted from taking any evidence that was not made available during the investigation to the authorities of investigating State according to the

---

48 Appellate Body Report, *United States — Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, ¶ 50, WTO Doc. WT/DS138/AB/R (adopted May 10, 2000).

49 World Trade Organization, *A Handbook on the WTO Dispute Settlement System* (2004) 104.

50 Yang Guohua and others, *WTO Dispute Settlement Understanding: A Detailed Interpretation* (Kluwer Law International 2005) 126.

51 Ravindra Pratap, *India at the WTO Dispute Settlement System* (Manak Publications Pvt Ltd 2004) 125.

52 Panel Report, *Guatemala — Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*, ¶ 8.19, WTO Doc. WT/DS156/R (adopted October 24, 2000).

53 Panel Report, *United States — Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, ¶ 7.7, WTO Doc. WT/DS184/R (adopted February 28, 2001).

established procedure. While getting support for this stand from Article 17.5(ii), the Panel also held that it is not entitled to perform a *de novo* review of issues considered and decided by the national investigating authorities.[54] This approach was also followed by the Panels in *US — Stainless Steel (Korea)*,[55] *Argentina — Ceramic Tiles*,[56] and *Egypt — Steel Rebar*.[57] In *EC — Fasteners (China) (Article 21.5 - China)*,[58] the Panel again refused to consider certain crucial evidences submitted by the respondent, which were not part of the record of investigation conducted by the investigating authority, and the Appellate Body went on to accept this approach.[59] In *EU — Biodiesel (Argentina)*,[60] the Panel even refused to consider some data used by the investigating authority as they were not part of the record of the investigation. While giving further emphasis on this point and rejecting *de novo* review, the Appellate Body in *Russia — Commercial Vehicles*[61] asserted that when a party claims that a report or part of it does not form part of the investigation record at the time of the national authorities' determination, the panel is bound to assess such claims objectively.

It is significant to note here that the requirement of facts to form part of the record of investigation to be considered for review by the panel is the creation of the WTO dispute settlement bodies. While Article 17.5 of the Anti-Dumping Agreement speaks about the 'facts made available' to national authorities in accordance with the appropriate domestic procedures, Article 17.6 refers to the review of 'establishment' and 'evaluation' of facts made in the course of investigation by national

---

54 *See US — Hot-Rolled Steel* (ABR), (n 39), ¶ 56. The Appellate Body specified that the roles of panels and national investigating authorities are different and the panels have to only consider the meeting of broad standard of unbiased and objective determination by the national investigating authorities.

55 Panel Report, *United States — Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, ¶ 6.18, WTO Doc. WT/DS179/R (adopted December 22, 2000).

56 Panel Report, *Argentina — Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy*, ¶¶ 6.2–6.3, WTO Doc. WT/DS189/R (adopted September 28, 2001).

57 Panel Report, *Egypt — Definitive Anti-Dumping Measures on Steel Rebar from Turkey*, ¶¶ 7.15–7.21, WTO Doc. WT/DS211/R (adopted August 8, 2002).

58 Panel Report, *European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (Art. 21.5 – China)*, WTO Doc. WT/DS397/RW (adopted August 7, 2015).

59 Appellate Body Report, *European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (Art. 21.5 – China)*, ¶ 5.59, WTO Doc. WT/DS397/AB/RW (adopted January 18, 2016).

60 Panel Report, European Union — *Anti-Dumping Measures on Biodiesel from Argentina*, ¶ 7.408, WTO Doc. WT/DS473/R (adopted Mar. 29, 2016).

61 Appellate Body Report, *Russia — Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy*, ¶ 5.134, WTO Doc. WT/DS479/AB/R (adopted March 22, 2018).

authorities. Neither of them mention the requirement of facts to be 'part of the record of investigation' to confer the power on the panel for review. The requirement of facts being part of the record of investigation seems to stem from the misconception that 'facts made available in conformity with appropriate domestic procedures' under Article 17.5 would always form the 'part of the record of investigation'. Hence, adherence to the requirement of facts being part of the record of investigation brings forward the question — what happens if there are some evidences placed before the national authorities, which are not recorded by them, either intentionally or accidently?

On the aspect of review of legal interpretations, the Appellate Body in *US — Continued Zeroing*[62] has observed that the function of the second sentence of Article 17.6(ii) is to confine the review to the interpretative range and not to require further interpretative exercise by the deciding authority to find out one single interpretation within the range. However, the Appellate Body cautioned that the range of interpretation should not be as wide and contradictory as to encompass two rival meanings.[63] This indicates the panel's limitation on excessive invasion on the interpretation of law made by the national authorities as well. Thus, all the above cases reflect a rigid standard of deference used by the WTO dispute settlement bodies.

4.2 The Departure

4.2.1 On the Assessment of Facts

By contrast to the above-discussed cases of deference, we can observe more pro-active approach of the WTO adjudicating bodies in the review of both assessment of facts and interpretation of law on several occasions. The Panel in *US — Softwood Lumber VI*[64] imported the logic of two cases, *US — Lamb*[65] and *US — Cotton Yarn*,[66] which were decided under the Agreement on Safeguards. It concurred with the Appellate Body's view that:

---

62 US — Continued Zeroing (ABR), (n 39) 272.

63 ibid 312.

64 Panel Report, *United States — Investigation of the International Trade Commission in Softwood Lumber from Canada*, WTO Doc. WT/DS277/R (adopted March 22, 2004) [hereinafter *US — Softwood Lumber* (Panel)].

65 Appellate Body Report, *United States — Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WTO Docs. WT/DS177/AB/R & WT/DS178/AB/R (adopted May 1, 2001).

66 Appellate Body Report, *United States — Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*, WTO Doc. WT/DS192/AB/R (adopted October 8, 2001) [hereinafter *US — Combed Cotton Yarn* (ABR)].

> ...Although panels are not entitled to conduct a *de novo* review of the evidence, nor to *substitute* their own conclusions for those of the competent authorities, this does *not* mean that panels must simply *accept* the conclusions of the competent authorities.[67]

Thus, the above observation indicated that a complete deference approach should not be adopted by the panel. Completely relying on the investigation report on the idealistic belief that the national investigating authorities are honest and active investigators would be a mistake.[68] As the national investigating authorities are keen to protect the interest of their domestic industry, there is every chance of they carrying on the investigation in a way suitable to them. Certain evidences may be concealed and conclusions may be arrived at by referring to only those evidences, which suit their requirements. Hence, it is argued that the panel needs to conduct an active review to prevent such misuses, and to comply with its mandate of 'objective assessment' under the DSU. In the absence of such an active review, the entire mechanism of the WTO dispute settlement would become a formality in case of anti-dumping, giving scope for unregulated trade restrictions under the garb of anti-dumping measures. Limitations on review would also mean contracting out the expertise of the WTO dispute settlement bodies, which have greater experience and institutional knowledge in WTO law and practice than the national authorities.[69]

Need for departure from complete deference has been highlighted by the WTO panels and the Appellate Body in several other cases. In *EC — Bed Linen*,[70] the Panel observed that there is no requirement of considering the facts exclusively in the format in which they were placed before the investigating authority. The Panel also held that it was not precluded from considering a new document, which may comprise of the facts made available during investigation to the investigating authority. Interestingly, this observation uses the expression 'facts made available to the investigating authority' rather than 'facts forming part of the record of investigation' with respect to the power of the panel to review.

---

67 *US — Softwood Lumber* (Panel) (n 64), ¶ 7.16.

68 Petros C. Mavroidis, *The Regulation of International Trade* (2016) 173.

69 Matthias Oesch, 'Standard of review in WTO panel proceedings' in Rufus Yerxa & Bruce Wilson (eds), *WTO, Key Issues in WTO Dispute Settlement: The First Ten Years* (Cambridge University Press 2006) 161, 166.

70 Panel Report, *European Communities — Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, ¶ 6.43, WTO Doc. WT/DS141/R (adopted October 30, 2000).

In *US — Steel Plate*,[71] reliance placed on Article 11 of the DSU by India, while advocating for an 'active review', was criticised by the United States by arguing that the standard of review under the Anti-Dumping Agreement is different. According to the United States, applying general standard of review under the Anti-Dumping Agreement in the presence of specifically agreed Article 17.6 adds on obligations to investigating authorities, which is not permissible. Hence, it also expressed that Indian reliance on *US — Cotton Yarn*,[72] which was a case on safeguards action, was incorrect. However, the Panel, relying on the decision in *US — Hot-Rolled Steel*,[73] observed that there is no conflict between the standard of review under Article 11 of the DSU and Article 17.6 of the Anti-Dumping Agreement. Interestingly, it also observed that the standard of review under the Anti-Dumping Agreement does not limit the panel's examination of matters but may only limit the manner in which the examination is to be conducted.

In *EU — Fatty Alcohols (Indonesia)*,[74] the Appellate Body observed that the national authorities' determination is not the final point of reference while reviewing the measure by the panel. The panel is free to examine any evidence that was on the record of investigation though not expressly mentioned in the final determination by national authorities. This approach was reiterated by the Panel in *Korea — Pneumatic Valves*[75] by stating that the Panel's examination is not limited to only the pieces of evidence expressly relied upon by the national investigating authorities. The panel is free to consider any other piece of evidence connected to the explanation of national authorities in the determination, provided that was on record.

4.2.2 On the Interpretation of Law

While the above cases showed the deviation from the strict deference approach in the review of 'assessment of facts', there are also cases wherein such deviation can be seen in the review of 'interpretation of law'. The Appellate Body, for example, countered the argument of Thailand that the Panel had failed to give due deference to Thailand's interpretation of its own law in *Thailand — Cigarettes (Philippines)*.[76] It went on to observe

---

71 Panel Report, *United States — Anti-Dumping and Countervailing Measures on Steel Plate from India*, ¶ 7.1, 7.2, 7.5, 7.6, WTO Doc. WT/DS206/R (adopted June 28, 2002).

72 *US — Combed Cotton Yarn* (ABR) (n 66).

73 *US — Hot-Rolled Steel* (ABR) (n 39) 55.

74 Appellate Body Report, *European Union — Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia*, ¶ 5.92, WTO Doc. WT/DS442/AB/R (adopted September 5, 2017).

75 Panel Report, *Korea — Anti-Dumping Duties on Pneumatic Valves from Japan*, ¶ 7.10, WTO Doc. WT/DS504/R (adopted April 12, 2018).

76 Appellate Body Report, *Thailand — Customs and Fiscal Measures on Cigarettes from the Philippines*, 63 n. 253, WTO Doc. WT/DS371/AB/R (adopted June 17, 2011).

that though Thailand is in a better position to explain the nature of obligations under its own law, the Panel should not desist from intervening with Thailand's interpretation of its law especially when the other party disagrees with the content of the obligations. The panel needs to make an objective assessment, as required under Article 11 of the DSU, based on the text of concerned provision/s and evidences before it.

The Panel in *US — Softwood Lumber VI*[77] has observed that the rules of treaty interpretation applicable under the Anti-Dumping Agreement are the same as any other dispute. The panel's obligation to adhere to the national authorities' interpretation is only in the circumstances of presence of more than one permissible interpretation. It is pertinent to note here that till date, the WTO dispute settlement bodies have only mentioned in their decision that the interpretation by the national authorities has fallen within one of the permissible interpretations (while upholding national authorities' interpretation), but in no case they have pointed out the other permissible interpretation of the text. This takes us back to some fundamental questions — can the application of customary rules of interpretation of public international law result in more than one permissible interpretation? Aren't Articles 31 and 32 of the VCLT drafted in order to reach one single interpretation of a treaty text to avoid confusion and bring predictability in treaty interpretation?

While analysing this issue, Qureshi puts forward several arguments on the possibility of more than one permissible interpretation.[78] He advocates that Articles 31 and 32 of the VCLT do not contain a complete set of interpretative rules and just stand as 'broad guidelines' in interpretation. Also by referring to Article 33(4) of the VCLT,[79] he indicates the possibility of different interpretations after applying Articles 31 and 32 of the VCLT.[80] However, these arguments do not seem to be convincing. Comprehensiveness of Articles 31 and 32 as interpretative tools to reach single and consistent interpretation, though debated, is accepted in practice. This is evident in the fact that the use of Articles 31 and 32 of the VCLT by any international fora, including the International Court of Justice, has not indicated the possibility of more than one permissible

---

77 US — Softwood Lumber (Panel) (n 64), ¶ 7.22.

78 Asif H. Qureshi, *Interpreting WTO Agreements: Problems and Perspectives* (Cambridge University Press 2006) 217-18.

79 Vienna Convention on the Law of Treaties 1969, art 33(4), 1155 U.N.T.S. 331: 'Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted'.

80 Qureshi (n 78) 217.

interpretation in any case. Also arguing on Article 33(4) is incorrect, as it is confined to the interpretation of treaties authenticated in two or more languages. Moreover, a careful reading of Article 33(4) also advocates for a single interpretation by stating that '... the meaning which best reconciles the text, having regard to the object and purpose of the treaty, shall be adopted'. Though there may also be an argument that the possibility of more than one permissible interpretation under Article 17.6 of the Anti-Dumping Agreement is rooted in unwritten principles of administrative law or of domestic constitutional settings,[81] express application of Articles 31 and 32 of the VCLT might not give scope for it. Hence, the possibility of more than one permissible interpretation of provisions of the Anti-Dumping Agreement itself is debatable.[82]

These concerns over more than one permissible interpretation are also evident in the following official statement of the Canadian Department of Finance:

> This ADA specific standard of review, in so far as it contemplates multiple acceptable interpretations of ADA provisions, could undermine the predictability of the WTO dispute settlement system over time and result in the anomalous situation of two different standards of review being applied in the context of the same dispute.[83]

Added to above, though the Appellate Body in *US — Continued Zeroing*[84] has showed reluctance in excessive invasion into the national authorities' interpretation of law, it has gone on record to state that variability, contradiction and uncertainty in the process of interpretation are hallmarks of failure and not success. It also went on to conclude that the application of customary rules of interpretation of public international law would not result in conflicting interpretations. While holding that the concept of zeroing is inconsistent with Article 9.3 of the Anti-Dumping Agreement, the Appellate Body observed that the conflicting and diametrically opposite interpretation of holding zeroing as consistent with the same provision (as argued by the United States) is not permissible.[85]

Finally, while discussing the relationship between Article 17.6(ii) of the Anti-Dumping Agreement with that of Article 11 of the DSU, the

---

81 Oesch (n 69) 165.

82 Croley and Jackson (n 40) 200–201.

83 Department of Finance, Canada, 'Anti-dumping Issues' (Consultation Paper on WTO Subsidies and Trade Remedies Negotiations) <www.linguee.com/english-french/search?source=auto&query=specific+standard+of+review%%3E> accessed 26 December 2020.

84 US — Continued Zeroing (ABR), (n 39) 306.

85 ibid 317.

Appellate Body in *US — Hot-Rolled Steel*[86] has observed that Article 17.6(ii) of the Anti-Dumping Agreement is supplementary to Article 11 of the DSU. It doesn't replace the mandatory obligations of the panel under Article 11 of the DSU. Therefore, nothing in Article 17.6(ii) of the Anti-Dumping Agreement prevents the panel from conducting an 'objective assessment' of the legal provisions, their applicability to a dispute and conformity of challenged measures with the Anti-Dumping Agreement. Thus, the above cases have tried to breach the ceiling of complete deference so that the panel can enjoy some liberty in the review of anti-dumping measures.

5.0 Conclusion

The standard of review in anti-dumping cases is much more complicated than in other cases due to the presence of a specific provision under Article 17.6 of the Anti-Dumping Agreement. The DSU is silent on the specific standard of review to be adopted by the panel, and it only mentions the requirement of 'objective assessment'. Thus, it seems to confer power on the panel to decide whether to adopt the deference approach or the *de novo* approach, depending on the circumstances to conduct an objective assessment. In the presence of Article 17.6 of the Anti-Dumping Agreement, the WTO dispute settlement bodies have shown reluctance to conduct a *de novo* review in many of the cases. However, there are instances wherein they have found that such reluctance towards *de novo* review and the adoption of complete deference approach is an impediment in delivering justice through 'objective assessment'. This has resulted in a persistent puzzle between the deference and the *de novo* approaches.

The existing confusion in the standard of review is not only problematic for the WTO dispute settlement bodies but also for the parties to the disputes, since their arguments are dependent on the status of review. This confusion in the mind of parties would severely prejudice the justice delivery system at the WTO level. Moreover, just like anti-dumping measures, countervailing duties to offset the effect of subsidies and safeguard measures under the GATT/WTO regime involve similar kind of investigations by the national authorities. However, the standard of review applicable by virtue of Article 17.6 in anti-dumping is not found therein. Though the 1994 Ministerial Decision states that there would be a review of Article 17.6 of the Anti-Dumping Agreement after a period of three years to consider the possibility of its general application, no such extension has been done till date. It is a clear indicator of the difficulty

[86] US — Hot-Rolled Steel (ABR), (n 39) 62.

involved in the use of standard of review stipulated under Article 17.6 of the Anti-Dumping Agreement.

As explained above, Article 17.6 of the Anti-Dumping Agreement is the by-product of immediate self-interest of the United States during the Uruguay Round of trade negotiations, which it was not ready to compromise. The politico-economic scenario has changed ever since, and a hegemonic imposition of norms based on self-interest is no more acceptable in the present global power equations. Undoubtedly, Article 17.6 of the Anti-Dumping Agreement stands as an impediment in the equitable administration of justice under different WTO agreements. Therefore, it is advisable to bring parity in the standard of review under different WTO agreements by allowing the panel to decide the requisite standard of review on case by case basis after considering the facts and circumstances of the case. The panels' mandate of 'objective assessment' under Article 11 of the DSU would operate as a balance between the interests of State/s taking trade measures and rest of the world by providing sufficient safeguard against any possible misuse. The proposed move, in the course of time, would bring necessary predictability in the dispute resolution procedure, which is most crucial in retaining faith and confidence of States in the WTO dispute settlement system.

REFERENCES

International Instruments

- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (i.e. the Anti-Dumping Agreement) 1994.
- General Agreement on Tariffs and Trade (GATT) 1994.
- Marrakesh Agreement Establishing the World Trade Organization 1867.
- Vienna Convention on the Law of Treaties 1969.

Cases

- Appellate Body Report, *Canada — Measures Affecting the Export of Civilian Aircraft*, WTO Doc. WT/DS70/AB/R (adopted August 2, 1999).
- — —, EC — Measures Concerning Meat and Meat Products (Hormones), ¶133, WTO Docs. WT/DS26/AB/R & WT/DS48/AB/R (adopted January 16, 1998).
- — —, *European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (Art. 21.5 – China)*, ¶ 5.59, WTO Doc. WT/DS397/AB/RW (adopted January 18, 2016).
- — —, *European Union — Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia*, ¶ 5.92, WTO Doc. WT/DS442/AB/R (adopted September 5, 2017).

- — —, *Mexico — Tax Measures on Soft Drinks and Other Beverages*, 51, WTO Doc. WT/DS308/AB/R (adopted March 6, 2006).
- — —, *Russia — Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy*, ¶ 5.134, WTO Doc. WT/DS479/AB/R (adopted March 22, 2018).
- — —, *Thailand — Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, ¶ 117, WTO Doc. WT/DS122/AB/R (adopted March 12, 2001).
- — —, *Thailand — Customs and Fiscal Measures on Cigarettes from the Philippines*, 63 n. 253, WTO Doc. WT/DS371/AB/R (adopted June 17, 2011).
- — —, United States — Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, ¶ 57, WTO Doc. WT/DS184/AB/R (adopted July 24, 2001).
- — —, United States — Continued Existence and Application of Zeroing Methodology, ¶ 267, WTO Doc. WT/DS350/AB/R (adopted February 4, 2009).
- — —, *United States — Final Anti-Dumping Measures on Stainless Steel from Mexico*, WTO Doc. WT/DS344/AB/R (adopted April 30, 2008).
- — —, *United States — Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, ¶ 50, WTO Doc. WT/DS138/AB/R (adopted May 10, 2000).
- — —, *United States — Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WTO Docs. WT/DS177/AB/R & WT/DS178/AB/R (adopted May 1, 2001).
- — —, *United States — Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*, WTO Doc. WT/DS192/AB/R (adopted October 8, 2001).
- Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984).
- Panel Report, *Argentina — Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy*, ¶¶ 6.2–6.3, WTO Doc. WT/DS189/R (adopted September 28, 2001).
- — —, *European Communities — Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, ¶ 6.43, WTO Doc. WT/DS141/R (adopted October 30, 2000).
- — —, *European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (Art. 21.5 – China)*, WTO Doc. WT/DS397/RW (adopted August 7, 2015).
- — —, European Union — *Anti-Dumping Measures on Biodiesel from Argentina*, ¶ 7.408, WTO Doc. WT/DS473/R (adopted March 29, 2016).
- — —, *Egypt — Definitive Anti-Dumping Measures on Steel Rebar from Turkey*, ¶¶ 7.15–7.21, WTO Doc. WT/DS211/R (adopted August 8, 2002).
- — —, *Guatemala — Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*, ¶ 8.19, WTO Doc. WT/DS156/R (adopted October 24, 2000).

- — —, *Korea — Anti-Dumping Duties on Pneumatic Valves from Japan*, ¶ 7.10, WTO Doc. WT/DS504/R (adopted April 12, 2018).
- — —, *United States — Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil*, WTO Doc. WT/DS382/R (adopted March 25, 2011).
- — —, *United States — Anti-Dumping and Countervailing Measures on Steel Plate from India*, ¶ 7.1, 7.2, 7.5, 7.6, WTO Doc. WT/DS206/R (adopted June 28, 2002).
- — —, *United States — Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, ¶ 7.7, WTO Doc. WT/DS184/R (adopted February 28, 2001).
- — —, *United States — Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, ¶ 6.18, WTO Doc. WT/DS179/R (adopted December 22, 2000).
- — —, *United States — Investigation of the International Trade Commission in Softwood Lumber from Canada*, WTO Doc. WT/DS277/R (adopted March 22, 2004).

Books

- Bhala R, *International Trade Law - Interdisciplinary Theory and Practice* (3rd edn, LexisNexis 2014).
- Bohanes J and Lockhart N, 'Standard of Review in WTO Law' in Bethlehem D and others (eds), *The Oxford Handbook of International Trade Law* (OUP 2009).
- Guohua Y and others, *WTO Dispute Settlement Understanding: A Detailed Interpretation* (Kluwer Law International 2005).
- Jackson J H, *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations* (Cambridge University Press 2007).
- Matsushita M and others, *The World Trade Organization: Law, Practice, and Policy* (2nd edn, Oxford University Press 2006).
- Mavroidis P C, *The Regulation of International Trade* (2016).
- Oesch M, 'Standard of review in WTO panel proceedings' in Yerxa R & Wilson B (eds), *WTO, Key Issues in WTO Dispute Settlement: The First Ten Years* (Cambridge University Press 2006).
- Pratap R, *India at the WTO Dispute Settlement System* (Manak Publications Pvt Ltd 2004).
- Qureshi A H, *Interpreting WTO Agreements: Problems and Perspectives* (Cambridge University Press 2006).
- Raju K D, *World Trade Organization Agreement on Anti-dumping: A GATT/WTO and Indian Jurisprudence* (Kluwer Law International 2008).
- World Trade Organization, *A Handbook on the WTO Dispute Settlement System* (2004).

Journal Articles

- Croley S P and Jackson J H, 'WTO Dispute Procedures, Standard of Review, and Deference to National Governments' (1996) 90 (2) The American Journal of International Law 193, 201.
- Ehlermann C D and Lockhart N, 'Standard of Review in WTO Law' (2004) 7 (3) Journal of International Economic Law 491, 498.
- Epps T, 'Recent Developments in WTO Jurisprudence: Has the Appellate Body Resolved the Issue of Appropriate Standard of Review in SPS Cases?' (2012) 62 (2) The University of Toronto Law Journal 201, 222.
- Guzman A T, 'Determining the Appropriate Standard of Review in WTO Disputes' (2009) 42 (1) Cornell International Law Journal 45, 48.
- Mavroidis P C, 'Raiders of the Lost Jewel (in the Crown)' (2015) 14 (3) Journal of International Trade Law & Policy 106–111.
- Oesch M, 'Standards of Review in WTO Dispute Resolution' (2003) 6 (3) Journal of International Economic Law 635, 637.
- Ram J R, 'Cracks in the 'Crown Jewel' — Whither 'Prompt Settlement' of WTO Disputes?' (2018) 10 (2) Trade Law & Development 302.
- Wolff A W, 'Reflections on WTO Dispute Settlement' (1998) 32 (3) The International Lawyer 951.

Others

- Department of Finance, Canada, 'Anti-dumping Issues' (Consultation Paper on WTO Subsidies and Trade Remedies Negotiations) <www.linguee.com/english-french/search?source=auto&query=specific+stan dard+of+review%%3E> accessed 26 December 2020.
- Dispute Settlement, WTO <www.wto.org/english/tratop_e/dispu_e/dispu_e.htm> accessed 12 December 2020.
- Legal Texts: The WTO Agreements, World Trade Organization <www.wto.org/english/docse/legal_e/ursum_e.htm#Understanding> accessed 12 December 2020.
- Miles T, *U.S. Blocks WTO Judge Reappointment as Dispute Settlement Crisis Looms*, REUTERS (August 27, 2018) <www.reuters.com/article/us-usa-trade-wto/u-s-blocks-wto-judge-reappointment-as-dispute-settlement-crisis-looms-idUSKCN1LC19O> accessed 12 December 2020.
- *Unprecedented Challenges Confront Appellate Body, Chair Warns*, WTO (June 22, 2018) <www.wto.org/english/news_e/news18_e/ab_22jun18_e. htm> accessed 12 December 2020.