ARBITRATION IN CIS COUNTRIES: CURRENT ISSUES
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WTO DISPUTE SETTLEMENT AND THE CIS COUNTRIES

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WTO Dispute Settlement System

- Busiest “state-to-state court” : 438 disputes in 17 years
- The “jewel of the crown” of the WTO
- Success due to:
  - Optimal performance in resolving disputes through parties’ agreements or adjudication
  - WTO Members trust the system:
    - high number of disputes
    - high compliance rate
Facts and Figures

- Performance
- Nature of disputes
- Complainants
- Respondents
- Agreements at issue
- Disputes involving CIS countries
Performance

- Number of disputes initiated: 438
- Panels established: 190 (236 disputes)
- Panels composed: 163 (206 disputes)
- Panel reports adopted: 169
- AB reports adopted: 107
- MAS reached or complaint withdrawn: 20.5%

ICJ (1945): 150 in 65 years

Nature of Disputes

Disputes on technical trade issues of ‘little interest’ to the general public
- EC – Computer Equipment
- EC – Bed Linen and US – Stainless Steel

Disputes on politically sensitive issues generating much public attention
- US – Shrimp, Brazil – Retreaded Tyres; US - Tuna
- EC – Hormones; EC – Asbestos and US/Canada – Continued Suspension
- US – Gambling
- EC – Bananas and EC – Tariff Preferences
- EC – Airbus and US - Boeing
- US – Clove Cigarettes
Complainants

- US: 22%
- EC: 19%
- Brazil: 5%
- Canada: 7%
- Japan: 3%
- Argentina: 3%
- India: 5%
- Mexico: 5%
- Australia: 1%
- Other developed countries: 25%
- Other developing countries: 5%
- Brazil: 5%
- EC: 19%
Respondents

- US: 27%
- EC: 19%
- Brazil: 3%
- Canada: 4%
- Japan: 3%
- Other developed countries: 2%
- India: 5%
- Argentina: 4%
- Mexico: 3%
- China: 6%
- Korea: 3%
- Australia: 3%
- Other developing countries: 18%
- Argentina: 4%
- Canada: 4%
- Brazil: 3%
- EC: 19%
Agreement at Issue

GATT 1994; 339

- TRIPS; 31
- TRIMs; 29
- Licensing; 34
- Safeguards; 41
- SPS; 37
- TBT; 43
- Agriculture; 66
- Subsidies; 85

Anti-Dumping; 92
Disputes involving CIS Countries

Three disputes initiated by Ukraine:

Two against CIS countries (NT internal taxation):
- Armenia – Measures Affecting the Importation and Internal Sale of Cigarettes and Alcoholic Beverages
- Moldova – Environmental Charge (panel established)

One against Australia (plain packaging):
- Australia – Certain Measures concerning Trademarks and other Plain Packaging Requirements applicable to Tobacco Products and Packaging

One dispute initiated by Moldova against a CIS country (NT internal taxation):
- Ukraine – Taxes on Distilled Spirits (panel established)
General Features

- Basic nature
- Object and purpose
- Jurisdiction
- Institutions
- Procedures
- Implementation and enforcement
Basic Nature

- Rules-based, quasi-judicial dispute settlement
- Only open to governments from WTO Members
- No damages, although high rate of compliance
- Predictability through a large body of jurisprudence
Object & Purpose

- Secure positive solution to a dispute
- Preference for mutually agreed solutions (MAS)
- Provide security & predictability to MTS
- Preservation & clarification
- Gap filling and rule-making?
- Not add to or diminish rights and obligations
Jurisdiction

Scope of the jurisdiction

- Covered agreements
- Non-WTO agreements?

Nature of the jurisdiction

- Compulsory
- Exclusive
- Contentious
Institutions

- Dispute Settlement Body (DSB)
  - Composition and meetings
  - Key decisions ... by reverse consensus

- WTO dispute settlement panels
  - First instance *ad hoc* tribunals
  - Establishment and composition

- Appellate Body
  - Permanent appeals tribunal
  - 7 Members appointed by DSB
Proceedings

- Steps in the proceedings
  - Consultations
  - Panel proceedings
  - Appellate review
  - Implementation/enforcement

- General features of the proceedings
  - Time-frame
  - Confidentiality/transparency
Implementation and Enforcement

implementation
- Withdrawal/amendment of the measure
- Immediately
- Within a reasonable period of time (RPoT)

Enforcement
- Compensation
- Suspension of concessions (retaliation)