

THE RTA EXCHANGE DIALOGUE SERIES

Dispute Settlement Mechanisms in RTAs

8 February 2018 – Maison de la Paix, Petal 5, Geneva

A joint Initiative of the International Centre for Trade and Sustainable Development (ICTSD) and the Inter-American Development Bank (IDB)

Agenda

9:00 – 9:15 **Welcome Remarks by the Organizers**

Jeremy T. Harris, IDB
Ricardo Meléndez-Ortiz, ICTSD

9:15 – 9:45 **Session I: Modes of RTA DSMs and facts on their utilization**

RTA dispute settlement provisions follow the political, quasi-judicial or judicial model, providing both litigious and non-litigious means for the enforcement of substantive obligations of RTAs. This session provides an overview of the general structure of the modes of RTA DSMs and related development.

Moderator: Ricardo Meléndez-Ortiz, ICTSD

- RTA DSMs: the modes, proceeding design and compliance mechanisms - Robert McDougall, ICTSD

Open discussion

9:45 – 10:00 **Coffee Break**

10:00 – 12:00 **Session II: RTA DSMs: overview and challenges in using them**

When trade differences arise, countries have mechanisms available under RTAs to settle them. Over the years, RTAs have shown varying levels of utilization of RTA DSMs. This session is a reality check on the utilization of RTA DSMs, and explores possible ways of addressing challenges for disputing parties in using RTA DSMs.

Moderator: Jeremy T. Harris, IDB

Resolution of trade differences in a non-adversarial setting: the political, cultural and technical factors, as well as case-specific elements.

- Handling trade, investment disagreements: the case of ASEAN - Henry Gao, Singapore Management University

- The role of African RECs in handling trade differences: dispute prevention and settlement - Amos Saurombe, University of South Africa

Varying levels of utilization of RTA DSMs

- *Ad hoc* panels under CAFTA-DR - Joost Pauwelyn, Graduate Institute
- Trade disputes in Mercosur and their resolutions - Natasha Suñé, University of Buenos Aires

Commentators: Arnel Marcos Sánchez, Permanent Mission of the Philippines to the WTO; Amy Porges, Porges Law PLLC; Leidylin Irene Contreras Ramírez, Ministry of Industry and Trade of the Dominican Republic; Luis Adolfo Fernández López, Permanent Mission of Costa Rica to the WTO; Victoria Francolino, Permanent Mission of Uruguay to the WTO

Open discussion

12:00 – 13:30 Lunch

13:30 – 15:15 Session III: Lessons learned from recent RTA disputes

The cases are a test for the efficiency and effectiveness of RTA DSMs. They are good sources of ideas for improvements, and are useful contexts in future RTA negotiations. This session covers “conflict of laws” and forum selection clauses in RTAs, as well as other practical issues pertaining to RTA DSMs.

Moderator: Yaxuan Chen, ICTSD

- Forum selection: a strategic consideration? - Hugo Perezcano Díaz, Centre for International Governance Innovation
- Conflict of laws and jurisdiction: RTA vs. RTA, RTA vs. WTO - Fernando Piérola, ACWL
- Litigate a RTA dispute: evidence rules, amicus brief, panel compensation, and other procedural issues - Claudia Orozco, Trade Law Advice
- Post-litigation stage for RTA disputes: any lessons? - Simon Lester, Cato Institute

Commentators: Pedro Fabián Negueloatcheverry, Permanent Mission of Argentina to the WTO; Marco Tulio Molina Tejeda, Permanent Mission of Guatemala to the WTO; Leticia Ramírez Aguilar, Permanent Mission of Mexico to the WTO; Luis Adolfo Fernández López, Permanent Mission of Costa Rica to the WTO; Daniela Ferreira de Matos, Permanent Mission of Brazil to the WTO

Open discussion

15:15 – 15:30 Coffee Break

15:30 – 17:30 Session IV: A more comprehensive way of addressing trade disputes?

Looking forward, a relevant overarching question is what can be done further to have a system that would address trade disputes in a more comprehensive manner. On the soft-law making side, good level of consistency at multilateral and regional levels is essential. This session will also discuss ideas on achieving this consistency.

Moderator: Robert McDougall, ICTSD

- Inspiration from mega-regional trade agreements - Stephan Schill and Geraldo Vidigal, University of Amsterdam
- The One Belt One Road DSM: A Promising New Trial? - Xiaohong Zhou, Jilin University School of Law
- Forming a common set of procedural rules for handling RTA trade disputes - Amy Porges, Porges Law PLLC
- Revisit the idea of having a global trade dispute settlement mechanism as a common good for RTA dispute - Henry Gao, Singapore Management University
- What if RTA DSMs start to adjudicate WTO cases: the political prospective and technical feasibilities? - Brendan McGivern, White&Case

Commentators: Celso de Tarso Pereira, Permanent Mission of Brazil to the WTO; Guohua Yang, School of Law of Tsinghua University; Claudia Orozco, Trade Law Advice; Kyonglim Choi, Permanent Mission of Korea to the WTO; Paolo Garzotti, Permanent Mission of the European Union to the WTO

Open discussion

17:30 – 17:45 Concluding Remarks

Jeremy T. Harris, IDB

Ricardo Meléndez-Ortiz, ICTSD