Mapping of Dispute Settlement Mechanisms in Regional Trade Agreements

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Project objectives

- Classify a dataset of RTA-DSMs
- Identify trends and patterns of use
- “Nuts and bolts” analysis – Functioning of RTA-DSMs
- Appraisal of the universe of RTA-DSMs and comparative analysis of predominant RTA-DSM model, and WTO-DSM
Classification

Three models of dispute settlement

• Political / Diplomatic
• Quasi-Judicial
• Standing tribunal
### Results of classification

<table>
<thead>
<tr>
<th>DSM Model</th>
<th>Number of RTAs</th>
<th>Share of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political</td>
<td>69</td>
<td>30%</td>
</tr>
<tr>
<td>Quasi-judicial</td>
<td>147</td>
<td>65%</td>
</tr>
<tr>
<td>Judicial</td>
<td>10</td>
<td>5%</td>
</tr>
<tr>
<td>Total</td>
<td>226</td>
<td>100%</td>
</tr>
</tbody>
</table>
Trends in RTA-DSM design

- Evolution over time
- Level of Economic Development
- Regional Characteristics
- Level of Integration
- Configuration
Evolution of RTAs and corresponding DSM model - cumulative figures

Source: WTO Secretariat.
Dispute Settlement in RTAs: pre- and post-entry into force of the DSU

Source: WTO Secretariat.
Regional characteristics

• Strong preference in some geographic regions for certain DSM models

• In the Americas, quasi-judicial model is preferred

• In Europe, with the exception of Turkey’s RTAs with Balkan countries, quasi-judicial model predominates
Regional characteristics

• In Asia, quasi-judicial model is preferred (except in west Asia where political model is used)

• In CIS, clear preference for the political model

• In Africa, more or less even split between the quasi-judicial and judicial models
RTA-DSMs – nuts and bolts analysis

Issues examined

• Jurisdictional scope
• Forum-related provisions
• Standing
• Consultations
• Adjudicating bodies (composition, qualifications, nationality requirements)
• Interim Review
RTA-DSMs – nuts and bolts analysis

**Issues examined**

- Appellate review
- Duration of adjudicatory process
- Implementation, compliance and remedies
- Transparency
- Third parties
- Role of political bodies and administrative secretariats
- Special and differential treatment
- Costs
RTA-DSMs - appraisal of the universe

- Preference for quasi-judicial model
- Low degree of institutionalization
- Regulation of RTA-WTO interface
- Replication of WTO panel procedures
- The paradox of RTA-DSMs
RTA-DSMs and WTO-DSM

Limited departures from the DSU

• Panel composition
• Remedies
• Transparency
• Timeframes
RTA-DSMs and WTO-DSM

**RTA-DSMs – the paradox**

- Low levels of DS activity under RTA-DSMs with few exceptions.
- WTO Members “continue to use the WTO dispute settlement system to resolve disagreements with their PTA partners.” (WTR, 2011)
Causal explanations of forum choice

- Explicit deferral to the WTO for some subject areas – SPS, TBT, trade remedies; intellectual property
- More familiarity with WTO-DSM rules (Porges, 2011; Van den Bossche and Lewis, 2013);
- Large body of WTO case law that ensures predictability of jurisprudence (Van den Bossche and Lewis, 2013);
- Relative reputational costs of non-compliance with WTO rulings and PTA rulings (Davey, 2006);
Causal explanations of forum choice

- Relative value of creating legal precedent at the multilateral level vs bilateral or plurilateral levels (Busch, 2007);
- RTA-DSMs are inherently designed as a “second best” option – a bulwark against the remote, yet real possibility of multilateral failure (Froese, 2014)
THANK YOU