



United Nations Conference on Trade and Development

**Report of the Workshop on Dispute Settlement in International Trade,
Investment and Intellectual Property**

**20–22 January 2000
Geneva**

Note by the UNCTAD secretariat

This note contains a brief report on the Workshop on Dispute Settlement in International Trade, Investment and Intellectual Property. The note was prepared by the UNCTAD secretariat.

I. Introduction

The Secretary-General of the United Nations recommended to the General Assembly at its fifty-second session that UNCTAD be authorized to convene a meeting of 10 experts to study the possibility of developing a curriculum for a training workshop dealing with the complexities of the settlement of disputes in international trade and investment for lawyers and businesspeople in least developed countries (document A/52/898, paragraphs 23 and 24). The General Assembly endorsed the proposal of the Secretary-General in operative paragraph 1 of its resolution 53/3 of 9 November 1998 on the reallocation of savings resulting from the improved overall cost-effectiveness achieved pursuant to the ninth session of the United Nations Conference on Trade and Development.

Pursuant to this mandate, UNCTAD convened:

(a) An informal meeting held on 17 September 1999 in Geneva, attended by a number of experts in the relevant areas. The group was invited to make recommendations on training in the field of dispute settlement in international trade, investment and intellectual property. One of the recommendations was to convene a workshop for participants from developing countries. The deliberations and recommendations of the group of experts are contained in a separate report (see UNCTAD/EDM/Misc.80, 7 December 1999).

(b) A Workshop on Dispute Settlement in International Trade, Investment and Intellectual Property. The Workshop was held from 20 to 22 January 2000 in Coppet, Switzerland.

II. Programme

The Workshop considered three distinct areas of dispute settlement – those of international trade, investment and intellectual property. They were reviewed from the perspective of, and with regard to the interests of developing countries.

1. International trade

Three brief presentations were made on the recent developments relating to dispute settlement in the World Trade Organization (WTO). Professor Petros Mavroidis spoke about the use by developing countries of the Dispute Settlement Understanding (DSU) of the WTO. Mr. Peter van den Bossche, Counsellor at the Appellate Body Secretariat of the WTO, discussed the use of the WTO appellate review system by developing countries. Professor William Davey, former Director, and Mr. Pieter Jan Kuyper, present Director of the Legal Affairs Division of the WTO, commented on the review of the WTO Dispute Settlement Understanding carried out in 1999, and the results from the point of view of the developing countries.

The presentations were followed by a panel discussion dealing with the experiences of developing countries with dispute settlement under the DSU. The panel was chaired by Mr. Rubens Ricupero, Secretary-General of UNCTAD. The panelists were Ambassador Luz Guarda of Chile, Ambassador Alejandro de la Peña of Mexico, former Ambassador Anthony Hill of Jamaica, and Ambassador Srinivasan Narayanan of India.

A special luncheon event was organized as part of the programme, featuring Mr. Julio Lacarte-Muró, Member of the Appellate Body of the World Trade Organization. Mr. Lacarte-Muró offered a view from the bench concerning the interests of developing countries in the WTO legal and dispute settlement system.

2. *International investment*

Professor Ernst-Ulrich Petersmann, of the University of Geneva compared the advantages and disadvantages of initiatives by developing countries to submit investment disputes to the International Court of Justice, the Permanent Court of Arbitration or the World Trade Organization. Professor Giorgio Sacerdoti of Università Commerciale Luigi Bocconi in Milan compared the advantages and disadvantages of the application of UNCITRAL, ICC or ICSID procedures in the settlement of investment disputes, as well as the effect of the simultaneous submission of such disputes to those bodies.

Mr. Antonio Parra, Deputy Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID), made two presentations on the procedure and jurisprudence of ICSID.

3. *Intellectual property*

The Workshop featured two presentations on dispute settlement in the field of intellectual property. Mr. Francis Gurry, Assistant Director-General and Legal Counsel of the World Intellectual Property Organization (WIPO), spoke about the settlement of intellectual property disputes under the rules and procedures of the WIPO Arbitration Centre. Professor Thomas Cottier of the University of Berne offered a presentation on the experiences of developing countries with disputes falling under the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS, their submission to the WTO panel, and the effect of Appellate Body Reports dealing with such disputes.

The Workshop concluded with a round table on how to help developing countries to make the best use of alternative dispute settlement procedures in the fields of trade, investment and intellectual property. The round table was chaired by Mr. Carlos Fortin, Deputy Secretary-General of UNCTAD. The panelists were Mr. Samuel Asante, President, International Legal and Investment Consultants, Ltd., Ghana; Mr. Leo Palma, Legal Affairs Counsellor, Permanent Mission of the Philippines to the WTO; Ambassador Apiradi Tantraporn of Thailand; and Mr. Weewawit Weewaworawit, Deputy Director-General of the Department of Intellectual Property, Ministry of Commerce of Thailand.

III. *Cooperation*

The Workshop was organized with the cooperation of the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO) and the International Centre for Settlement of Investment Disputes (ICSID) of the World Bank Group. This cooperation was enhanced through the active participation of several senior members of these organizations in the Workshop as lecturers and speakers, including Mr. Pieter Jan Kuijper, Director, Legal Affairs Division of the WTO; Mr. Francis Gurry, Assistant Director-General and Legal Counsel of WIPO; and Mr. Antonio Parra, Deputy Secretary-General of ICSID.

IV. Participants

Fifty persons participated in the Workshop, representing Permanent Missions to the United Nations in Geneva, Permanent Missions to the World Trade Organization, government capitals and several international law firms.

V. Training proposal

A representative of the UNCTAD secretariat introduced a proposal for training in the field of dispute settlement in international trade, investment and intellectual property. The proposal encompasses three basic components:

(a) The preparation of a handbook on dispute settlement in international trade, investment and intellectual property, consisting of some 25 volumes of 40 pages each. The volumes will be prepared by experts, and in consultation with the WTO, WIPO, ICSID, UNCITRAL and ICC;

(b) The development of a distance-learning programme, and the creation of a website to be used in combination with the handbook on dispute settlement to provide training; and

(c) Pending completion of the above, the delivery of a number of traditional classroom courses based on a curriculum prepared in consultation with experts of the WTO, WIPO and ICSID.

The participants welcomed this training proposal and proposed that it be implemented without delay. They were of the view that developing countries would benefit from this training. They invited UNCTAD to cooperate with other international organizations in the implementation of these activities.

Annex I

Programme

Thursday, 20 January 2000

- 14:15 - 14:30 **Welcome and introduction to the training programme**
Erik Chrispeels
- 14:30 - 15:00 Alternative dispute settlement procedures for international trade and investment disputes: an overview
Ernst-Ulrich Petersmann
- Session I: Settlement of international trade disputes**
Chair: Reinaldo Figueredo
- 15:00 - 15:30 The dispute settlement understanding (DSU) of the WTO: use by developing countries
Petros Mavroidis
- 15:30 - 16:00 The WTO appellate review system: use by developing countries
Peter van den Bossche
- 16:00 - 16:40 Discussion/Coffee break
- 16:40 - 17:00 The 1999 full review of the WTO dispute settlement understanding: the outcome from the viewpoint of developing countries
William Davey
Pieter Jan Kuijper
- 17:00 - 18:00 Experiences of developing countries with dispute settlement under the DSU: round table with the participation of Permanent Representatives of developing countries to the WTO
Moderator: Rubens Ricupero
- 18:00 - 18:30 Discussion

Friday, 21 January 2000

- Session II: Settlement of international investment disputes: use of alternative dispute settlement mechanisms**
Chair: Samuel Asante
- 09:00 - 10:00 Case study: An investment dispute in a developing WTO member country: alternative dispute settlement mechanisms available to states and their comparative advantages/disadvantages: the International Court of Justice; the Permanent Court of Arbitration; the WTO.
Ernst-Ulrich Petersmann
- 10:00 - 10:30 Discussion
- 10:30 - 11:00 Coffee break
- 11:00 - 12:00 Continuation of the case study: comparative advantages/disadvantages of submitting the same investment dispute to mixed arbitration proceedings: ICSID; UNCITRAL arbitration procedures; ICC arbitration procedures
Giorgio Sacerdoti
- 12:30 - 13:00 Discussion
- 13:00 - 15:00 Lunch
Guest speaker: Developing countries and the WTO legal and dispute settlement system: a view from the bench.
Julio Lacarte-Muró
- 15:00 - 16:00 Case study: investment disputes under ICSD dispute settlement procedures

Antonio Parra

16:00 - 16:30 Discussion/Coffee break

16:30 - 17:30 Continuation of the case study: procedural and substantive legal problems in ICSID dispute settlement practice

Antonio Parra

17:30 - 18:00 Discussion

Saturday, 22 January 2000

Session III: Settlement of intellectual property disputes

Chair: Weerawit Weewaworawit

09:00 - 10:00 Settlement of intellectual property disputes under the rules of WIPO: alternative dispute resolution mechanisms

Francis Gurry

10:00 - 10:45 WTO panel and Appellate Body reports on TRIPS disputes: experiences and problems of developing countries

Thomas Cottier

10:45 - 11:15 Coffee break

11:15 - 12:30 How to assist developing countries to make the best use of alternative international dispute settlement procedures in the field of trade, investment and intellectual property: round table with the participation of the chairs and Permanent Representatives of developing countries to the WTO

Moderator: Carlos Fortin

Annex II

SPEAKERS AND PARTICIPANTS

I. Speakers

Mr. Samuel K.B. Asante, International Legal and Investment Consultants Ltd., Accra, Ghana
Mr. Thomas Cottier, Professor of Law, University of Berne, Switzerland
Mr. William Davey, Professor of Law, University of Illinois School of Law, Illinois, United States; former Director of the Legal Affairs Division, World Trade Organization (WTO)
Mr. Alejandro de la Peña, Ambassador, Permanent Mission of Mexico to the WTO, Geneva, Switzerland
Mr. Reinaldo Figueredo, former Minister of Foreign Affairs of Venezuela
Mr. Carlos Fortin, Deputy Secretary-General, United Nations Conference on Trade and Development (UNCTAD), Geneva, Switzerland
Ms. Carmen Luz Guarda, Ambassador, Permanent Mission of Chile to the WTO, Geneva, Switzerland
Mr. Francis Gurry, Assistant Director-General and Legal Counsel, World Intellectual Property Organization (WIPO), Geneva, Switzerland
Mr. Anthony Hill, former Ambassador, Permanent Mission of Jamaica to the United Nations, Geneva, Switzerland
Mr. Pieter Jan Kuijper, Director, Legal Affairs Division, World Trade Organization, Geneva, Switzerland
Mr. Julio Lacarte-Muró, Member, Appellate Body, WTO, Geneva, Switzerland
Mr. Petros Mavroidis, Professor of Law, University of Neuchâtel, Switzerland
Mr. Srinivasan Narayanan, Ambassador, Permanent Mission of India to the WTO, Geneva, Switzerland
Mr. Leo Palma, Legal Affairs Counsellor, Permanent Mission of the Philippines to the United Nations, Geneva, Switzerland
Mr. Antonio R. Parra, Deputy Secretary-General, International Centre for the Settlement of Investment Disputes (ICSID), World Bank Group, Washington DC, United States
Mr. Ernst-Ulrich Petersmann, Professor of Law, University of Geneva, Switzerland
Mr. Rubens Ricupero, Secretary-General, United Nations Conference on Trade and Development (UNCTAD), Geneva, Switzerland
Mr. Giorgio Sacerdoti, Professor of Law, Università Commerciale Luigi Bocconi, Milan, Italy
Mrs. Apiradi Tantraporn, Ambassador, Permanent Mission of Thailand to the WTO, Geneva, Switzerland
Mr. Peter van den Bossche, Counsellor, Appellate Body Secretariat, WTO, Switzerland
Mr. Weewawit Weewaworawit, Deputy Director-General, Department of Intellectual Property, Ministry of Commerce of Thailand, Bangkok

II. Participants

Ms. Ana Lucia Aguirre, First Secretary, Permanent Mission of Guatemala to the United Nations
Mr. A.E. Ahmad, Joint Secretary, Permanent Mission of India to the United Nations
Mr. Ahmed Al-Shanbary, Assistant Attaché, Permanent Mission of Saudi Arabia to the United Nations
Ms. Amparo Oviedo Arbelaz, Minister Counsellor, Permanent Mission of Colombia to the World Trade Organization

Mr. Jaime Coghi Arias, Counselor, Permanent Mission of Costa Rica to the World Trade Organization

Mr. Moe Kyaw Aung, First Secretary, Permanent Mission of Myanmar to the United Nations

Mr. Kalilu Omaro Bah, Permanent Secretary, Civil Service Ministry of Trade and Industry of Sierra Leone

Mr. Alejandro Buvinic, First Secretary, Permanent Mission of Chile to the World Trade Organization

Mr. Francisco Pessanha Cannabrava, Secretary, Permanent Mission of Brazil to the United Nations

Ms. Ma. Angelina Sta. Catalina, First Secretary, Permanent Mission of Philippines to the United Nations

Ms. Nicole Clarke, Counsellor, Permanent Mission of Barbados to the United Nations

Mr. Thosapone Sansupura, Counselor, Deputy Director, Permanent Mission of Thailand to the World Trade Organization

Ms. Philippa Davies, First Secretary, Permanent Mission of Jamaica to the United Nations

Ms. Jacqueline Escobar, Deputy Permanent Representative, Permanent Mission of Panama to the United Nations

Ms. Martha Gabrielone, Assistant to the Ambassador, Permanent Mission of Argentina to the United Nations

Ms. Natacha Guma, Second Counsellor, Permanent Mission of Cuba to the United Nations

Mr. Shahidul Haque, Counselor, Permanent Mission of Bangladesh to the United Nations

Mr. Oscar Hernandez, Minister Counselor, Permanent Mission of Venezuela to the United Nations

Ms. Tran Cam Hung, First Secretary, Permanent Mission of Vietnam to the United Nations

Mr. Marc Koulen, Legal Affairs Counselor, World Trade Organization

Mr. V. Lakshmikumar, Advocate, Lakshmikumar and Sridharan

Ms. Rosemarie Luna, Permanent Mission of Argentina to the United Nations

Ms. Liliana Mangeac, First Secretary, Permanent Mission of Romania to the United Nations

Ms. Lizzie Medrano, First Secretary, Permanent Mission of Guatemala to the United Nations

Mr. Esteban Andrés Morelli, Counsellor, Permanent Mission of Argentina to the United Nations

Mr. Adrian Otten, Director, Intellectual Property Division, World Trade Organization

Mr. Leo Palma, Legal Affairs Counsellor, Permanent Mission of the Philippines to the WTO, Geneva, Switzerland

Mr. Tarek Fouad Riad, Managing Director, Law Firm of Kosheri, Rashid & Riad

Ms. Mary Ann Richards, Chargé d'Affaires, Permanent Mission of Trinidad and Tobago to the United Nations

Ms. Zakia Sahli, Counsellor, Permanent Mission of the Libyan Jamahiriya to the United Nations

Mr. Surech Man Shresta, Deputy Permanent Representative, Permanent Mission of Nepal to the United Nations

Ms. Luz Sosa, Ministry of Foreign Affairs of Chile

Mr. Juris Stalemeistars, Attaché, Ministry of Foreign Affairs, Republic of Latvia

Mr. Attie Swart, Agricultural Counsellor, Permanent Mission of South Africa to the United Nations

Mr. Ashraf Swelem, Diplomatic Attaché, Permanent Mission of Egypt to the United Nations

Ms. Woinshet Tadesse, Joint Secretary, Permanent Mission of Ethiopia to the United Nations

Mr. Rodrigo Ugarriza, First Secretary, Permanent Mission of Paraguay to the World Trade Organization

Mr. David Vivas, Attaché, Permanent Mission of Venezuela to the World Trade Organization

Mr. Weewawit Weewaworawit, Deputy Director-General, Department of Intellectual Property, Ministry of Commerce of Thailand, Bangkok

Mr. Erik Wilbers, Senior Counsellor, World Intellectual Property Organization

Mr. Guohua Yang, Deputy Division Director, Permanent Mission of China to the United Nations

Mr. Jean-Emil Zanotti, Ambassador, Permanent Mission of the Central African Republic to the United Nations

Mr. Cosmos Luckyson Zavazava, Minister Counsellor, Permanent Mission of Zimbabwe to the United Nations

Mr. Zhongyuan Zhao, First Secretary, Permanent Mission of China to the United Nations

UNCTAD staff

Mr. Rubens Ricupero, Secretary-General of UNCTAD

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Ms. Manuela Tortora, Coordinator, Commercial Diplomacy Programme, Division on International Trade and Commodities

Mr. Rajhan Dhanjee, Legal Affairs Officer, Division on International Trade and Commodities

Ms. Simonetta Zarrilli Traeger, Economic Affairs Officer, Division on International Trade and Commodities

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