

ARBITRATION IN THE WTO¹

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1.- INTERNATIONAL LAW - NATURE

Concept today - International law should be understood as the system of treaties and norms governing international relations between sovereign states, as well as creating obligations of varied natures to its subjects and certain organizations, such as the UN and the ICJ.

Traditional concept excludes individuals and juridical persons.

Tendency

International disputes - Dispute is a disagreement of fact or law between two or more parties.

Municipal Law

Private international law

Public international law

Sources of law

Article 38 statute of the ICJ:

- a) international conventions.
- b) international custom, as evidence of a general practice accepted as law.

¹ Notes for the presentation made on October 20, 2003m at the Law School of the Fudan University, Shanghai, People's Republic of China.

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consultations	116
definitive decisions	51
settled or inactive	39
under way	14

51 cases

3 developing against developing
 17 developed as plaintiffs against developing
 8 developing as plaintiffs against developed
 23 developed against developed

of the 8 cases
 developing as plaintiffs against developed

5 cases lost	}	by developing countries
3 cases won		

of the 23 cases
 developed countries as plaintiffs
 16 cases lost by developing countries
 6 cases balanced result
 1 case won by a developing country

3.- STRUCTURAL FAILURES

Legal Nature

In general adversarial or contradictory in the WTO diplomatic "not contentions" objective "to secure a positive solution to the dispute".

Recommendations rather than rulings

Terminology

Ad-hoc Panel

Procedural *Lacunae*

Bobbio: incomplete - incoherent

Lacunae - *déni de justice* or *non liquet* (judicial economy)

- moot
- preliminary issues: {
 - excess of jurisdiction
 - conflict of treaties
 - locus standi*
- evidence
- burden of proof
- participation of lawyers
- joinder of defendants
- joinder of plaintiffs
- remand

Other problems

Execution {

- removal
- compensation
- retaliation
- not self-executing

Standard of review

Confidentiality - consultations
governance - democratic
controls

Amicus Curiae

4.- OPERATIONAL VICES

Secretariat
Scope
DSU 3.2.

- The ruling of the DSB cannot add to or diminish the rights and obligations under the covered agreements.
- To preserve rights and obligations of member in accordance with international law

In practice case law "stare decisis"

Derogation

India
Indonesia
Brazil

Amicus Curiae

Burden of Proof

Lawyers

Standard of Review (from dumping to safeguards)

Judicial economy (*déni de justice*) - India

Promise as execution (USA) 301

Duty of Co-operation (Canada)

Leather (Australia)

Reform of the DSU

- 1) Consultations
- 2) Panel Procedures
- 3) AB Procedures
- 4) Implementation and relief

- 5) Case law
- 6) Developing countries
- 7) Third Parties and *Amicus Curiae*