

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

DISPUTE SETTLEMENT

GENERAL TOPICS

1.1 Preface and Introduction



UNITED NATIONS
New York and Geneva, 2003

NOTE

The Course on Dispute Settlement in International Trade, Investment and Intellectual Property consists of forty modules.

The designations employed and the presentation of the material do not imply an expression of any opinion whatsoever on the part of the United Nations concerning the legal status of any country, territory, city or areas or of its authorities, or concerning the delimitations of its frontiers or boundaries. In quotations from the official documents and the jurisprudence of international organizations and tribunals countries are designated as reported.

The United Nations holds copyright to this document. The course is also available in electronic format on the UNCTAD website (www.unctad.org). Copies may be downloaded free of charge on the understanding that they will be used for teaching or study and not for a commercial purpose. Appropriate acknowledgement of the source is requested.

UNCTAD/EDM/Misc.232/Add.30

Copyright © United Nations, 2003
All rights reserved

I. PREFACE TO THE COURSE

During my tenure as Chairman first of the Council and then of the Contracting Parties of the General Agreement on Tariffs and Trade (GATT), I was particularly taken aback by the dramatic asymmetry between developed and developing countries, including those like my own, with a relatively large commercial presence in worldwide markets, in terms of the resources and manpower assigned to negotiations on international trade.

Today, international dispute resolution plays a pivotal role in international trade and commercial relations. Over the last decade, with the establishment and the consolidation of the World Trade Organization (WTO), international commercial exchanges have become increasingly rules-based. International dispute resolution in this field has become more judicial in nature, and is moving away from the traditional diplomatic conflict-solving approaches such as consultation, good offices or mediation.

As a consequence, dispute resolution in economic and trade matters has become the realm of specialists. There is a growing awareness among developing countries, particularly the least developed countries (LDCs), of their special needs in these areas. The UNCTAD Project on Dispute Settlement in International Trade, Investment and Intellectual Property tries to respond to those needs within the context of a rapidly changing global economic and trade environment.

The cornerstone of the Project is the Course on Dispute Settlement, which focuses on dispute settlement according to the rules and the procedures developed by the World Trade Organization (WTO), the International Center for Settlement of Investment Disputes (ICSID), the World Intellectual Property Organization (WIPO) and the United Nations Commission on International Trade Law (UNCITRAL). The Course has 40 modules, which can be used together or independently of each other. They are user-friendly and can be adopted for individual learning, teaching or train-the-trainer efforts or as a reference tool. The Course is designed for young government officials, academics, legal practitioners and corporate lawyers in developing countries wishing to familiarize themselves with the basic rules and the key jurisprudence.

It is my hope that the Course will contribute to the transfer and enhancement of legal expertise and to awareness-raising about the importance of these vital issues for developing countries. In so doing it would be a significant step towards filling the existing expertise gap and establishing a more level playing field for developing countries, and particularly LDCs, as important players in international trade.

Rubens Ricupero
Secretary-General of UNCTAD
March 2003

II. INTRODUCTION TO THE COURSE

The United Nations Conference on Trade and Development (UNCTAD) based in Geneva has, among its activities in support of developing countries and economies in transition, a technical cooperation project on dispute settlement in international trade, investment and intellectual property. The project

aims at assisting interested persons from the legal profession, governments, international organizations, academia and business in understanding the basic rules and jurisprudence of dispute settlement in international trade, investment and intellectual property, and at helping to build a permanent capacity in this domain in developing countries and countries with economies in transition.

Training, information sharing and capacity building are the principal activities of the project. This course is the basic training material prepared within the framework of the project. This introduction seeks to explain the reasons for the project and its expected output, as well as the background to and the results expected from this course.

Context

The growth of trade in goods and services and the increased flow of foreign direct investment (FDI) and technology across borders have prompted governments and the private sector to adopt substantive legal rules on international trade, investment and intellectual property, and to establish international or regional bodies and procedures for the settlement of disputes arising from their interpretation and application. This process moves in two opposite directions: substantive rules are unified, while dispute settlement bodies and procedural rules are multiplied. In other words, substantive legal rules on trade, services, investment or intellectual property are unified by international and regional organizations, but the settlement of the disputes arising from their interpretation and application is entrusted to a growing number of international bodies and rules.

At the international level, the World Trade Organization (WTO) provides for the settlement of trade disputes between States; the World Bank Group (WG) administers dispute settlement between States and private investors; and the World Intellectual Property Organization (WIPO) has facilities for dispute settlement between private commercial parties. In addition, the United Nations Commission on International Trade Law (UNCITRAL), responsible for the unification of trade law and procedures, has developed rules for arbitration, mediation and conciliation of commercial disputes between private parties

Likewise, at the regional level, the North American Free Trade Agreement (NAFTA), the Association of South-East Asian Nations (ASEAN) and the

Southern Common Market (MERCOSUR) have established procedures and rules for the settlement of disputes arising from intraregional trade in goods and services and from investments. The establishment of dispute settlement bodies is under consideration in southern Africa and in Central America. In addition, the Asian African Legal Consultative Organization (AALCO) has sponsored the creation of regional arbitration centres in New Delhi, Kuala Lumpur, Cairo and Lagos, which are mandated to settle commercial disputes between private parties.

The growing number of bodies and rules available for the settlement of disputes arising in international trade, investment and intellectual property calls for a better understanding of their jurisdiction, applicable law, modus operandi and decision-making. It has therefore become necessary to study, compare and evaluate them.

Commercial partners around the world wish to enforce their rights and obtain effective remedies through established international procedures. As a result, dispute settlement has become an important feature of the rules-based multilateral trade, investment and intellectual property regimes.

Governments and the private sector in developing countries and countries with economies in transition are increasingly seeking assistance in building the necessary capacity to protect their interests when disputes arise concerning commitments undertaken by them or by their trade and investment partners. They are aware that their limited skills and knowledge of how to secure compliance, through legal channels, with trade, investment and technology agreements – which are international agreements or international contracts – can adversely affect their commercial interests and can further marginalize them as potential beneficiaries of trade and investment opportunities.

Needs assessment

Following the establishment of the WTO, UNCTAD made an evaluation of the need for training in commercial diplomacy and dispute settlement. Geneva-based diplomats, officials of regional organizations, legal practitioners and academics of developing countries all confirmed the need for such training.

In 1997, UNCTAD surveyed the training programmes of the inter-governmental organizations/bodies concerned. The findings were that they had small training programmes, that their training activities were of an *ad hoc* nature, and that limited financial and human resources were budgeted for this work. The World Intellectual Property Organization was the exception.

Recognizing the need to strengthen training for developing countries, the General Assembly, at its fifty-second session, acting on a proposal of the Secretary-General of UNCTAD, authorized UNCTAD to convene an informal group of experts to consider the development of a curriculum for training on

the settlement of disputes in international trade and investment for lawyers and business managers in the least developed countries (LDCs).

Preliminary work

The informal group of experts, which met on 17 September 1999 in Geneva, made a number of recommendations. The main ones were that training should be provided to all the developing countries, and that it should focus on dispute settlement in international trade, investment and intellectual property, with particular attention given to providing information about various dispute settlement bodies and the rules of intergovernmental organizations and bodies (WTO, WIPO, ICSID and UNCITRAL). They also recommended that the training be targeted at government officials, academics, legal practitioners and businesspersons in developing countries. It should be delivered at the regional and national levels, and should focus on practical aspects through inclusion of simulation exercises and case studies. It was further recommended that UNCTAD establish a network of academic and training institutions in developing countries.

At the invitation of UNCTAD, Professor E.-U. Petersmann prepared a curriculum for a training package based on the recommendations of the informal group of experts. UNCTAD also sought the advice and cooperation of senior legal officials at WTO, WIPO, ICSID and UNCITRAL. The curriculum was refined at a Workshop on Settlement of Disputes in International Trade, Investment and Intellectual Property held from 20 to 22 January 2000 in Geneva.

Subsequently, the Programme of Action adopted at UNCTAD's Tenth Session in Bangkok from 12 to 19 February 2000 included a recommendation that UNCTAD should support capacity building in developing countries so as to progressively enable these countries to become effective players in the multilateral trading system.

The project

Acting on this recommendation, the Secretary-General of UNCTAD established in the Secretariat a technical cooperation project on dispute settlement in international trade, investment and intellectual property.

The project has several activities that focus on information sharing, training and capacity building, as follows:

- Preparing/updating and circulating the course on dispute settlement;
- Organizing regional and national seminars, using the course on dispute settlement, in Africa, Asia, Latin America, the Caribbean, the Middle East, the Pacific and Central and Eastern Europe;
- Training the trainers;
- Providing distance learning;
- Offering internships; and
- Making available advisory services on dispute settlement procedures to interested intergovernmental organizations in developing countries.

The project was reviewed by a group of diplomats and experts meeting informally on 14 May 2000 in Geneva. A large majority of them approved its aim and proposed activities, and emphasized the need for coordination with training programmes of other organizations and bodies. Subsequently, the meeting authorized UNCTAD to present the project for funding to donor governments. Accordingly, the Secretary-General submitted a proposal for funding to several governments and to the General Assembly.

Expected results of the project

The implementation of the project depends on the interest of the donor countries and the readiness of the local partners to cooperate in its implementation. Within the coming five years, the project should help:

- Create a better understanding of dispute settlement in international economic relations among young professionals in developing countries and countries with economies in transition;
- Enhance the capacity of universities and research institutions to provide instruction and promote research on dispute settlement; and

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_10654

