

**CONFERENCE ON WTO DISPUTE SETTLEMENT:
*Between Honest Admiration and Candid Criticism***

Date: 2-3 May 2016

Venue: Centre for WTO Studies, Indian Institute of Foreign Trade, New Delhi

DAY 1 (Monday, 2 May 2016)

1. Inaugural Session

[10:00 AM – 11:00 AM]

Book Launch – "*WTO Dispute Settlement at Twenty – Insiders' Reflections on India's Participation*" – edited by Prof. Abhijit Das and Prof. James Nedumpara

Chief Guest – Hon'ble Commerce Minister

TEA BREAK – 11:00 AM – 11:30 AM

2. *When Nostalgia Kicks In – Reflections for the Future*

[11:30 AM – 01:30 PM]

Allotted time for each Speaker: 20 minutes approx.

Panelists:

- i. Prof. Mitsu Matsushita
- ii. Prof. David Unterhalter

The establishment of the Appellate Body (AB) as a second adjudicatory stage in the Dispute Settlement Mechanism (DSM) was one of the major innovations of the Uruguay Round. In the 20 years since it came into existence, the AB has decided upon an impressive 132 appeals on issues of law and legal interpretations arising from panel reports. Given the pivotal role the AB occupies in the dispute settlement process, this session aims to provide a platform to former AB members to share their rich experiences from their years on the bench. These former members – who are drawn from diverse backgrounds – would also provide insights for the future on the functioning of the Appellate Body and the dispute settlement process as such. Their sagacious advice could

be of much value for an appellate system faced with a burgeoning workload and an increasing complexity of disputes.

LUNCH BREAK – 01:30 PM – 02:30 PM

3. *Little Green Men – Environmental Jurisprudence in WTO Dispute Settlement*
[02:30 PM – 04:00 PM]

Allotted time for each Speaker: 20 minutes approx.

Chair: Prof. Arthur Appleton

Panelists:

- i. Prof. Gabriel Marceau

WTO disputes on environment-related measures have been fairly controversial. The panels and the AB are faced with the challenge of balancing a Member's right to implement measures designed to protect the environment with its duty to ensure that it does so without violating its WTO obligations. Such disputes also have an important bearing on the WTO's legitimacy as an organization that environmental critics maintain promotes free trade at the cost of the environment.

This session is dedicated to discussing how the environment-related jurisprudence, particularly under GATT Article XX and the TBT Agreement has emerged, and its significance in balancing varied interests both within and outside the WTO. It is hoped that the deliberations of this session will be able to provide valuable inputs for legal practitioners and policy-makers in designing and implementing environment-related measures, and also in facing challenges to these measures in the DSM.

TEA BREAK – 04:00 PM – 04:15 PM

4. *Select Issues in WTO Jurisprudence*
[04:15 PM – 05:45 PM]

Allotted time for each Speaker: 20 minutes approx.

Panelists:

- i. Mr. Edwin Vermulst
- ii. Prof. Arthur Appelton
- iii. Mr. Brandan McGivern

The 20 years of WTO's DSM has generated an array of interesting and controversial jurisprudence on various aspects of WTO law. This session will focus on select aspects of this jurisprudence. In particular, the panel will critically discuss the jurisprudence emerging from the string of cases on Zeroing and the evolution of the concept of "public body" in trade remedy disputes. The panel will also look into the interpretational issues that have emerged from *EC — Seal Products* and the TBT Trilogy cases (particularly on national treatment and MFN), along with the issue of overlapping disciplines in the GATT, TBT and SPS Agreements.

DAY 2 (Tuesday, 3 May 2016)

5. *May the (En)force(ment) Be With You: Remedies and Implementation*

[10:00 AM – 11:30 AM]

Allotted time for each Speaker: 20 minutes approx.

Panelists:

- i. Mr. James Flett
- ii. Mr. Niall Meagher [ACWL]
- iii. Prof. Tania Voon

The purpose of the DSM is to provide a rule-based system of settling disputes and establish a level playing field for *all* WTO Members. While Members have in most cases complied with the decisions of the panels and the Appellate Body, the compliance record has not been perfect. Moreover, developing country Members face additional hardships in the process, especially at the stage of retaliation if the countermeasure has to be imposed against a developed country Member. The aim of this session is to have a candid discussion on issues of implementation and remedies that have been rearing their head in the DSM.

Some of the issues that this session intends to discuss pertain to remedies, their nature and the adequacy of remedies, given the high stakes involved and the inordinate time it takes to actually see the results of implementation. For instance, is there a need to consider retrospective and provisional remedies in the DSM to improve its effectiveness?

TEA BREAK – 11:30 AM – 11:45 AM

6. *Ghosts of the DSM's Past, Present and Future: Systemic Issues*

[11:45 AM – 01:15 PM]

Allotted time for each Speaker: 20 minutes approx.

Panelists:

- i. Prof. Joost Pauwelyn
- ii. Prof. E. U. Petersmann

The objectives of this session are to discuss issues that are of systemic importance in the DSM. The functioning of panels and the AB in dealing with the dispute settlement process will be of particular focus. Some of the issues that are intended to be covered in this session are: whether panels/AB have exceeded their authority under the DSU or whether they are actually constrained from exercising sufficient autonomy in matters of procedure? The jurisprudence on interpretation of treaties by the panels/AB will also be considered to assess the extent to which the Vienna Convention on the Law of Treaties (VCLT) has been followed. In a related vein, the reliance on negotiating history of WTO agreements by the panels and AB is also another area that may be discussed.

Other important issues are: whether the DSM is prompt enough, as designed, to settle disputes in the WTO in light of the systemic delays the DSM is facing. Another issue that emerges in light of the proliferation of the FTAs pertains to the interaction and intersection between the FTA DSMs and the WTO's DSM. Will there be any conflict between DSM under RTAs and the WTO's DSM? If so, how should the WTO be prepared to deal with this conflict?

LUNCH BREAK – 01:15 PM – 02:15 PM

7. *Victor or Vanquished? Trials and Tribulations of Developing Countries*

[02:15 PM – 04:15 PM]

Allotted time for each Speaker: 20 minutes approx.

The participation of developing countries in the DSM has been a subject of many studies and scholarly debate. In fact, the effective participation of developing countries in the DSM is seen as vital to its legitimacy. It is therefore heartening to see dispute settlement statistics reflect a fair participation of developing countries as litigants and also as third parties. However, do these numbers belie the realities of developing country difficulties in participating in the DSM? Are developing countries able to effectively pursue complaints to their fruition? How strong are the legal, institutional and financial

capacities of developing countries in participating in the DSM? Is coordination and cooperation between industry, lawyers and government smooth and efficient?

TEA BREAK – 04:15 PM – 04:30 PM

8. *Of Bruises, Compromises and Victories: Discussion on India's Experiences in the DSM*

[04:30 PM – 06:30 PM]

Allotted time for each Speaker: 5 to 7 minutes approx.

Chair: Amb. Jayant Dasgupta

Panelists:

- i. Ms. R. V. Anuradha
- ii. Mr. Seetharaman Sampath
- iii. Mr. Ashish Chandra
- iv. Mr. Tapan Mazumdar
- v. Mr. Atul Kaushik

Ever since its first dispute concerning Polish duties against Indian automobiles, India has come a long way in its participation in the DSM, both as a complainant and a respondent, and also as a third party. Moreover, India has also actively been engaged in the negotiations concerning the DSU reforms. The purpose of this session is to gather government officials, lawyers, industry representatives and the academia from India to have a frank discussion on all aspects of India's engagement with the DSM. These discussions are aimed at highlighting drawbacks, if any, in India's dispute-settlement related capacities and processes, and identifying any scope for strengthening and improving the same. For instance, how has the legal and institutional capacities developed in India, as a response to the WTO disputes. How effective has the coordination between the government and the industry bodies and academia been in meeting the challenges faced by India in its WTO disputes?