

GLOBAL TRADE LAW SERIES

WTO LITIGATION, INVESTMENT ARBITRATION, AND COMMERCIAL ARBITRATION

Edited by

**Jorge A. Huerta-Goldman,
Antoine Romanetti &
Franz X. Stirnimann**



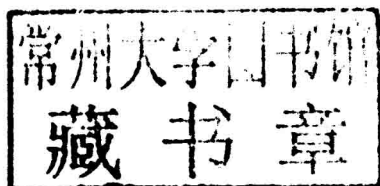
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Foreword

My interest was immediately captured when Mr Jorge Huerta-Goldman told me of his initiative to bring together eminent academics and practitioners to undertake research on the interaction amongst WTO litigation, investment arbitration and commercial arbitration. He joined forces with Mr. Antoine Romanetti and Mr Franz Stirnimann to organize a successful seminar at the WTO with presentations that evolved into the present publication.

International trade in goods and services as well as foreign investments have greatly expanded over the last quarter of century. The proliferation of global supply chains has greatly added to the complexity of these transactions and the lines that distinguish trade in goods and services as well as investments have become increasingly blurry. Companies, State entities and States demand better rules and more efficient legal tools to settle disputes.

WTO litigation, commercial arbitration and investment arbitration are the main available mechanisms to resolve international trade, investment and other contractual disputes. The challenge is to better understand how to leverage potential complementarity amongst them in order to improve the successful resolution of those disputes.

As to the WTO, it has developed an effective mechanism to settle trade disputes amongst its Members. Building up from the GATT (1947-1994) experience, since 1995 until early 2013 the WTO registered 456 requests for consultations with the adoption of more than 140 Panel/Appellate Body Reports. One must also add the 'advanced proceedings' (i.e., compliance proceedings under Art 21.5 of the DSU and arbitrations under Arts 21.3 and 22.6 of the DSU). The WTO experience could be useful for investment arbitration, such as, with regards to the functioning of the WTO Appellate Body. In fact, treaty-based tribunals do refer sometimes to the jurisprudence of the WTO. Likewise, the WTO system has already taken into account inputs from both arbitration mechanisms, and further improvements could follow.

In other words, the current available mechanisms will continue to evolve in order to meet the challenges of a changing economic reality. Deeper knowledge of these tool-boxes (and their crosscutting interactions) by practitioners, governments, international

organizations, academia and other stakeholders will certainly optimize results. This book is one of the earliest attempts, if not the first, to explore these opportunities.

Amb. Alejandro Jara
WTO Deputy Director-General
Geneva, 8 April 2013

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