Comparing dispute settlement systems: NAFTA and WTO

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Regional trade agreements (RTAs) and the WTO Agreements cover overlapping subjects relating to trade, at least partially. This may result in overlap of jurisdiction between the dispute settlement procedure under an RTA and the one under the WTO, to deal with a particular trade dispute between the parties to the RTA both of which are WTO Members. Accordingly, forum shopping between the WTO, on the one hand, and NAFTA or MERCOSUR, on the other, has become quite common.

On what basis do countries decide to go to a global forum, regional forum or both? How do RTAs regulate their relationship with the WTO dispute settlement procedure? What is the effect of dispute settlement under RTAs before a WTO panel? Are principles such as res judicata and estoppel relevant? Finally, which forum have the parties to RTAs chosen more frequently, regional or global? Why is it so?

Eleven years of dispute settlement under the NAFTA gives us insights into these important questions, both theoretically and practically.

NAFTA Article 2005:

1. Subject to paragraphs 2, 3 and 4, disputes regarding any matter arising under both this Agreement and the General Agreement on Tariffs and Trade, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party.

Japan-Singapore Economic Partnership Agreement Article 77:

This Chapter shall apply with respect to the avoidance and settlement of disputes between the Parties concerning the interpretation or application of this Agreement or the Implementing Agreement.

Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which they are parties.