WTO CASE LAW IN 2013

edited by GIORGIO SACERDOTI*

1. INTRODUCTION

2013 was a slow year for WTO case law in the sense that the only Appellate Body decisions to appear were the “twin reports” Canada – Renewable Energy and Canada – Feed-In Tariffs, which focus on the same renewable energy measures in the Canadian province of Ontario. In addition, two unappealed Panel Reports on antidumping measures, China – X-Ray Equipment and China – Broiler Products were adopted by the Dispute Settlement Body (DSB).

Despite few reports, 2013 was in several respects a landmark year. In particular, the disputes against Canada marked the first time the Appellate Body addressed the WTO-compatibility of renewable energy regulations, currently a contentious trade issue. The United States (US) and China have filed complaints against India and the European Union (EU) respectively for the use of similar measures. The outcomes thus provided an important precedent. While making clear that local content requirements for generation equipment are not compatible with WTO obligations, the decisions leave open questions about what types of green subsidies are permissible.

The rest of the dispute activity for the year focused on China, specifically the two Panel decisions mentioned above, concluding that it had misused trade remedies against alleged anti-competitive practices. Furthermore, in 2013, another antidumping dispute, concluded in 2012, China – GOES, which focused on similar claims, went to arbitration under Article 21.3 of the Dispute Settlement Understanding (DSU) to determine a reasonable period of time for implementation.

A number of disputes were set in motion, with 17 requests for consultation initiated. This is a return to average after 2012, an outlier year which saw the initiation of 27 new disputes. Russia marked its first full year of WTO membership with a high level of dispute activity. Russia filed its first complaint over EU anti-dumping measures. Its recycling fees for motor vehicles also became the target of complaints from Japan and the EU.

* Of the Board of Editors. This survey is carried out within the framework of the PhD program in International Law and Economics of the PhD School of Bocconi University in Milan. Professor Giorgio Sacerdoti, a former member of the WTO Appellate Body (2001-2009), has coordinated the individual reviews of WTO case law. The authors are PhD candidates and other young scholars associated with the PhD program in International Law and Economics; their names are listed at the end of each review.
It was also an active year for arbitration and compliance Panels. Besides the China – GOES arbitration, the Appellate Body reports from the 2012 in the disputes against the US under the TBT Agreement failed to be implemented to the satisfaction of complaining governments. Compliance panels have been composed to evaluate whether the US has implemented the Appellate Body decisions in US – Tuna II and US – COOL. In US – Clove Cigarettes, Indonesia proceeded directly to a request to impose trade remedies under Article 22.6 without first seeking a decision about whether the measures were in compliance under Article 21.5. This is the first time this has happened since EC – Bananas. Finally, the two compliance panels in EC – Large Civil Aircraft and US – Large Civil Aircraft (both composed in late 2012) have been unable to complete their work in 2013, and continued working on their reports into 2014.


2.1. Introduction

This dispute focused on a Feed-In Tariff (FIT) programme in the electricity market of the Canadian province of Ontario, which provided preferential rates and terms of service to renewable energy producers. At issue was the FIT’s Local Content Requirement (LCR), which stipulated that some of the electricity generation equipment had to be purchased domestically. Electricity market FITs are the most widely utilized strategy worldwide for increasing renewable energy use. They have been adopted by more than 71 countries and 28 States and provinces.\(^3\) LCRs, a common add-on to such programmes,\(^4\) are particularly controversial from a WTO perspective.\(^5\) Thus the precedents created by this dispute are significant for many WTO Member States.

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3 Ibid., pp. 65-68.
4 Hufbauer et al., Local Content Requirements: A Global Problem, Washington, DC, 2013.