

Tax Protectionism and Tax Discrimination: Relevance of Multilateral and Bilateral

INTERNATIONAL TAX CONFERENCE
IFA – IBDT – EMAG – FAUDASP SÃO PAULO – 2013

WTO: BRICS and Direct Taxation

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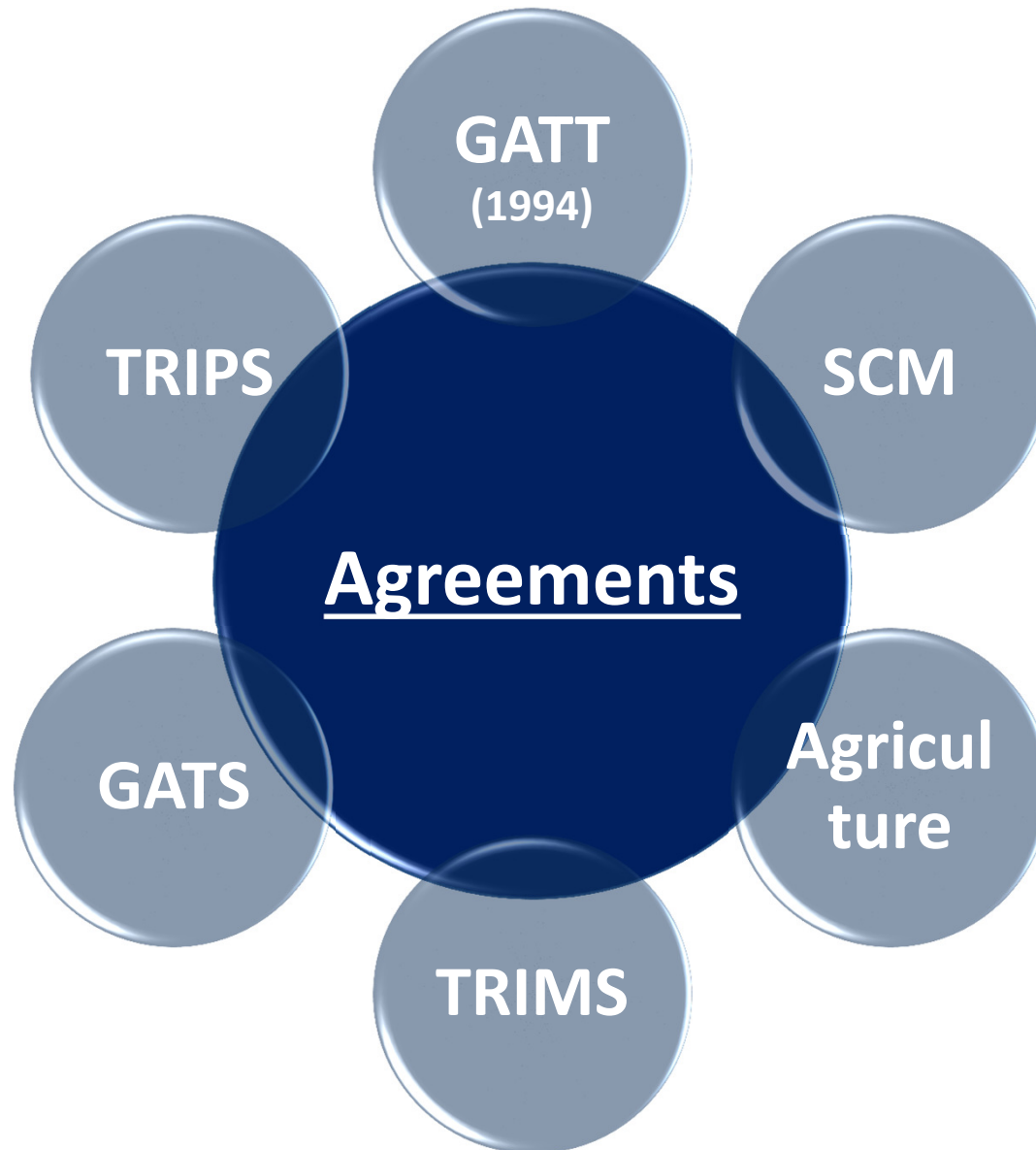
Tax Practitioner

30 September 2013



Centre for Commercial Law Studies

THE WTO AGREEMENTS



Definition of Subsidy

Article 1 as “a financial contribution by a member of the WTO or by a public body within the Territory of a Member which confers a benefit. Such contributions include revenue foregone as a consequence of tax incentives.” A subsidy will also include payments made as grants, loans, equity or the provision of goods or services (excluding infrastructure); purchases of goods and price support but any duty or indirect tax refunds or remissions on exported goods are excluded.

Accession Agreements

Russia

Direct taxes are an integral component in the discussion on Russian Accession and the List of Russian legislation provided as part of the Accession included direct tax law "On Taxation of Profits of Entities and Organizations"

China

Para 11 of the China Accession Protocol

- Customs fees or charges conformed to the GATT 1994.
- internal taxes and charges, including value-added taxes, conformed to the GATT 1994.
- elimination of all taxes and charges applied to exports unless covered in the Protocol's Annex 6 or applied in conformity with the provisions of Article VIII of the GATT 1994.
- foreign individuals and enterprises and foreign-funded enterprises were to be given favoured nation status on border tax adjustments. Annex 6 listed the duty rate and the products subject to export duty

Brazil, India and South Africa each became a WTO member in January 1995.

Trade Policy Review Mechanism

1. What is the trade policy review mechanism?
2. How does it work in practice?

Brazil



- Incentives and government assistance
- 11 federal subsidies programmes



India



- Tax incentives on SEZ
- 5 year tax holiday
- Terminated the inappropriate incentives



China



- 482 notification by 2012
- Changed tax policy and enacted new tax law
- Aware of its WTO obligations and impacts



South Africa



- Different interrelationship with WTO
- Incentives – key policy instruments
- ?

Russia: joined WTO in 2012 → no application yet

Dispute and Resolution Brazil



Boeing Case

Dispute DS108 and Brazil intervening might have been due to Canada's request for consultation with Brazil over an interest financing benefit provided by Brazil to non-resident purchasing Brazil manufactured aircraft

Dispute and Resolution China I

US Complain (February 2007):

“measures which appear to provide refunds, reductions or exemptions to China enterprises on the condition that those enterprises purchase domestic over imported goods, or on the condition those enterprises meet certain export performance criteria”

Inconsistency:

1. Article 3 of the SCM Agreement
2. Article III: 4 of the GATT 1994 and Article 2 of the TRIMs Agreement
3. China's obligations under its Accession Protocol

Resolution:



CHINA TAX LAW REFORM
1st January 2008
Enterprise Income Tax Law
Enterprise Income Tax Law Implementing Rules

Dispute and Resolution China II

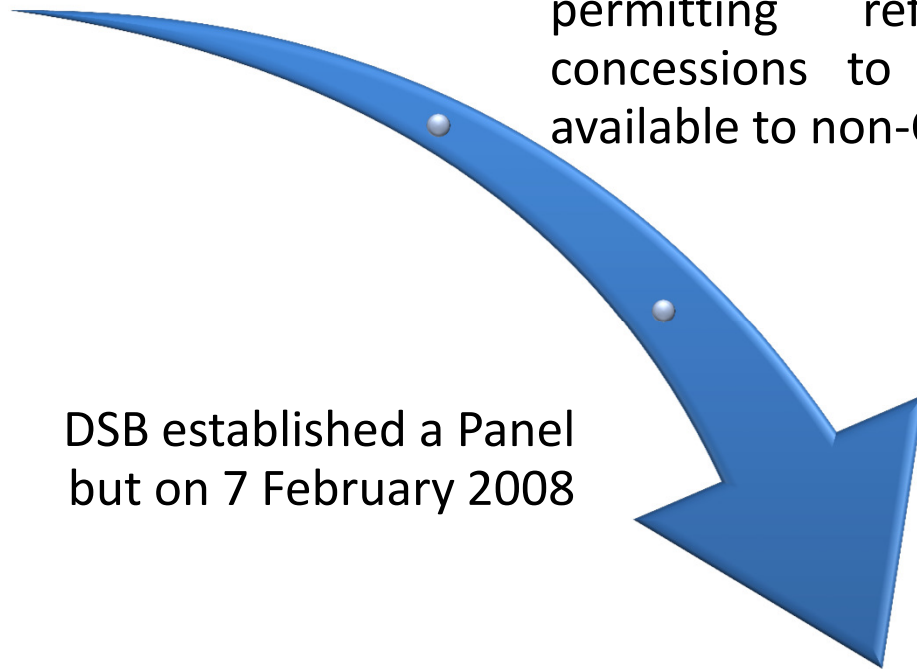
Mexico complains

Mexico sought
consultation

and believed → China's laws were
permitting refunds, reductions or
concessions to Chinese companies not
available to non-Chinese companies

DSB established a Panel
but on 7 February 2008

SETTLEMENT

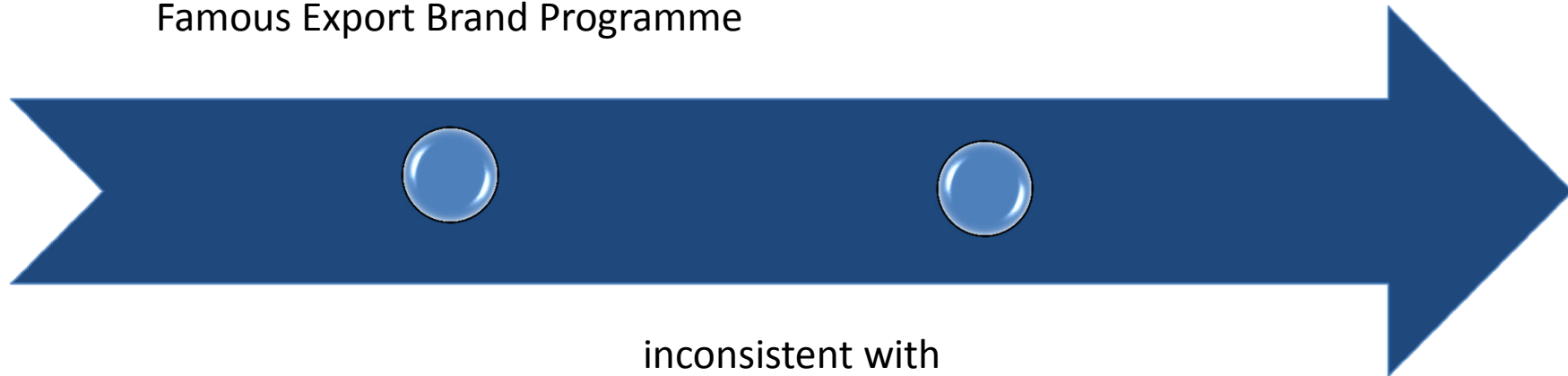


Dispute and Resolution China III

Guatemala complain (2009)

Guatemala complained that China had offered grants, loans and other incentives to enterprises in China because in its opinion, the grants, loans and other incentives were reflected in measures relating to the China World Top Brand Programme and the Chinese Famous Export Brand Programme

Consultation is still on-going



inconsistent with
Article 3 of the SCM
Agreement
and
China's obligations under its
Accession Protocol

Dispute:

Russia:

- ✓ has not made any complaints
- ✓ 2 complaints against Russia
- ✓ third party in 8 case (no direct tax cases)

India:

- ✓ -complaints 21 cases
- ✓ responded in 22 cases, 9 of them cover direct tax
- ✓ -third party in 90 cases

South Africa:

- ✓ No complaints
- ✓ Responded in 4 cases

**Thank you very much
for your attention!
Questions?**

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