



## Conference on

### Recent Developments in the WTO Disputes:

#### Case discussion on “Turkey – Certain Measures concerning the Production, Importation and Marketing of Pharmaceutical Products (EU)” dispute and its implications

*organized by*

*Centre for Trade and Investment Law and Centre for WTO Studies*

**25 January 2023, (Wednesday) 11:00 AM**

Venue: CRIT Conference Hall, 8<sup>th</sup> Floor, NAFED House, Mathura Road, Siddhartha Enclave, New Delhi - 110024

Centre for Trade and Investment Law (CTIL) and Centre for WTO Studies (CWTS) are organizing a conference on recent developments in WTO Disputes. The first edition of the conference would focus on **Turkey – certain measures concerning the production, Importation and marketing of pharmaceutical products, Arbitral Award, WT/DS583/ARB25**. The conference would discuss the award passed and the intricacies involved in this particular dispute in detail.

#### **Summary of the Dispute**

On 2 April 2019, the EU requested consultations with Turkey on certain measures concerning the production, importation and marketing of pharmaceutical products. Through the measure in dispute, Turkey sought to achieve localization of pharmaceutical products. In order to attain this, the localization requirement established by Turkey required foreign producers to commit to the local production of certain pharmaceutical products. On fulfilling this requirement, the pharmaceutical products offered by foreign producers were considered eligible for inclusion in Turkey's healthcare programme, which reimbursed outpatients for purchasing said pharmaceutical products. The consultations took place with Turkey on 9 and 10 May 2019, but both Parties failed to resolve the matter.

On 2 August 2019, the European Union requested the establishment of a Panel. At its meeting on 30 September 2019, the DSB established a panel. The relevant WTO provisions which were challenged in this dispute are: **Articles III:4, X:1, and XI:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994); Article 2.1 of the Agreement on Trade Related Investment Measures (TRIMs Agreement); Article 3.1.(b) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement).**



The Panel ruled against Turkey, which was further challenged by Turkey in an appeal. Since Turkey is not one of the parties to Multi Party Interim Appeal Arbitration Arrangement (MPIA) as agreed upon by certain Members of the WTO as an interim mechanism to the Appellate Body, it initiated proceedings under Article 25 of the Understanding on Rules and Procedures governing the Settlement of Disputes (DSU) pursuant to agreed procedures quite similar to MPIA. The arbitrators affirmed the Panel’s findings on the localization measure not being within the ambit of the derogation under Article III:8(a) of GATT 1994. However, the arbitrators gave their own reasoning in support of its conclusions.

### **Drawing lessons from the Dispute**

This dispute holds special significance as it is the first use of the rare ad hoc mechanism under Article 25 of the DSU in the absence of a functioning Appellate Body. Another important aspect of the dispute is the interpretation of the scope of Article III:8(a) of GATT i.e., whether the derogation applies to non-governmental bodies functioning under government directions. The dispute also came in the backdrop of the COVID-19 Pandemic, which has exerted significant pressure on states for building domestic capacity in critical areas such as healthcare and medicine.

### **Programme**

The tentative structure of the conference is as follows:

<b>Time</b>	<b>Presenter</b>	<b>Discussant</b>
11:00-11:30 hrs	High Tea/Tea and Coffee [Dinning Hall, 6 <sup>th</sup> Floor, NAFED House]	
11:30-12:30 hrs	Mr. Arnav Sharma, <i>Research Fellow, CTIL</i> Ms. Krishna Bhattacharya <i>Research Fellow, CTIL</i>	Prof. (Dr.) James J. Nedumpara, <i>Professor and Head, Centre for Trade and Investment Law, Ministry of Commerce and Industry, Government of India</i> Ms. Manya Gupta, <i>Senior Research Fellow, CTIL</i>
<b>Floor Discussion</b>		