

**REINFORCING DISPUTE SETTLEMENT
MECHANISM UNDER THE FRAMEWORK
CONVENTION ON TOBACCO CONTROL AS AN
OPTION TO SOLVE
TRADE/INVESTMENT-RELATED TOBACCO
DISPUTES**

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ABSTRACT

The liberalization of international trade in tobacco products has been criticized for the spread of tobacco epidemics worldwide. Tobacco control policies have been legally challenged for violations of international trade and investment agreements. Trade and investment issues have long been one of the controversies fiercely debated among delegates of the Framework Convention on Tobacco Control (hereinafter "FCTC") since the initiation of negotiation in 1999, and continue to be an issue in relation to the implementation of the FCTC since its entering into force in 2005. The tobacco-related dispute settlement mechanism and its relationship with other trade or investment dispute settlement mechanisms remains one of the significant issues due to the potential impacts of such trade or investment rulings on the formation and implementation of tobacco control policies. With a brief overview of how international trade issues evolved under the FCTC, this paper focuses on the examination of problems of current dispute settlement provision (namely Article 27) of the FCTC. While the use of Article 27 dispute settlement mechanism has limited implications for initiation of a trade or investment

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dispute, establishing an enhanced ad hoc arbitration mechanism avails Parties to the FCTC an alternative forum for solving tobacco disputes within the realm of the international health law. This paper explores possible options for the reinforcement of the current system to encourage the use of a pro-health settlement of tobacco disputes under the FCTC.

KEYWORDS: *tobacco control, dispute settlement, Framework Convention on Tobacco Control (FCTC), ad hoc arbitration, international trade, international investment, public health*