

## WTO 해석원칙으로서의 In Dubio Mitius 와 WTO관련 해상문제

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### Principle of In Dubio Mitius in interpreting WTO and WTO-related Maritime Issue

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**핵심용어** : 조약상 의무에 대한 제한적 해석원칙, 비엔나협약 제31,32조, 보조금협약

**Key Words** : the principle of restrictive interpretation of treaty obligations, Art. 31 & 32 of Vienna Convention, SCM Agreement

#### 1. Definition

*the principle of restrictive interpretation of treaty obligations in deference to the sovereignty of states*

#### 2. Applications

- the Appellate Body (AB) of the World Trade Organization (WTO)
- Has carried it into the 21st Century, reigniting the ideological debate
- dividing the legal doctrine over the conception of what the relationship between domestic and international law should be.

#### 3. Pro. and Opp.

*-the proponents and opponents of in dubio mitius, including domestic and international courts*

Christophe J. Larouer, "In the Name of Sovereignty? The Battle over In Dubio Mitius Inside and Outside the Courts", 2009

#### I.3.2 Text.

See also Interpretation, Legitimate expectations (L3.5); Municipal Law (M.5)

*I.3.2.1 Japan — Alcoholic Beverages II*, p. 12, DSR 1996:I, p. 97 at 105 (WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R)

Article 31 of the *Vienna Convention* provides that the words of the treaty form the foundation for the interpretive process: "interpretation must be based above all upon the text of the treaty". ...

*I.3.2.2 EC — Hormones*, para. 181 (WT/DS26/AB/R, WT/DS48/AB/R)

... The fundamental rule of treaty interpretation requires a treaty interpreter to read and interpret the words actually used by the agreement under examination, not words the interpreter may feel should have been used.

#### I.3.1 General rules of treaty interpretation — Articles 31 and 32 of the Vienna Convention

*I.3.1.1 US — Gasoline*, p. 17, DSR 1996:I, p. 3 at 16 (WT/DS2/AB/R)

The general rule of interpretation [as set out in Article 31(1) of the Vienna Convention on the Law of Treaties] has attained the status of a rule of customary or general international law. As such, it forms part of the "customary rules of interpretation of public international law" which the Appellate Body has been directed, by Article 3(2) of the *DSU*, to apply in seeking to clarify the provisions of the *General Agreement* and the other "covered agreements" of the *Marrakesh Agreement Establishing the World Trade Organization* (the "*WTO Agreement*"). That direction reflects a measure of recognition that the *General Agreement* is not to be read in clinical isolation from public international law.

*I.3.1.2 Japan — Alcoholic Beverages II*, p. 34, DSR 1996:I, p. 97 at 122–123 (WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R)

... WTO rules are reliable, comprehensible and enforceable. WTO rules are not so rigid or so inflexible as not to leave room for reasoned judgements in confronting the endless and ever-changing ebb and flow of real facts in real cases in the real world. They will serve the multilateral trading system best if they are interpreted with that in mind. In that way, we will achieve the "security and predictability" sought for the multilateral trading system by the Members of the WTO through the establishment of the dispute settlement system.

[https://www.wto.org/english/tratop\\_e/dispu\\_e/repertory\\_e/i3\\_e.htm#I.3.8](https://www.wto.org/english/tratop_e/dispu_e/repertory_e/i3_e.htm#I.3.8)

#### I.3.3 Context

*I.3.3.1 US — Carbon Steel*, para. 65 (WT/DS213/AB/R, WT/DS213/AB/R/Corr.1)

We have previously observed that the fact that a particular treaty provision is "silent" on a specific issue "must have some meaning". In this case, the lack of any indication, in the text of Article 21.3, that a *de minimis* standard must be applied in sunset reviews serves, at least at first blush, as an indication that no such requirement exists. However, as the Panel itself observed, the task of ascertaining the meaning of a treaty provision with respect to a specific requirement does not end once it has been determined that the text is silent on that requirement. Such silence does not exclude the possibility that the requirement was intended to be included by implication.

#### I.3.4 Domestic law and legislative history [back to top](#)

*I.3.4.1 US — FSC (Article 21.5 — EC)*, para. 150 (WT/DS108/AB/RW)

... The legislative history also states that the measure was adopted "to comply with decisions of a World Trade Organization dispute panel and Appellate Body". We take particular note of these statements, though we do not believe that it would be appropriate for us to end our inquiry here.