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Evocation of Trade Disputes Through Arbitration of The World Trade Organization

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Abstract: Arbitration is an independent, final and binding mechanism for resolving international commercial disputes within the framework of the WTO. There are two major international agreements on arbitration, namely the New York Convention and the ICSD Convention/*Washington*, which contains provisions in the form of "*the law of arbitration*". Arbitration concerns several things, including party autonomy, competence, legal obligations, good ethics, efficiency, audit and modification, privacy and confidentiality, separation, limitation of judicial involvement, venue, and fair and impartial treatment. The advantages of arbitration include fast resolution, confidentiality, and freedom to choose arbitrators. However, there are also disadvantages that must be considered. For example, if the parties do not fulfill the requirements of the good faith rule, then the arbitral award will lose full legal force and effect. Therefore, the selection of arbitration as a method of dispute resolution must be done carefully by considering all relevant aspects and principles.

Keywords : Evocation, Dispute, Business, International.

INTRODUCTION

In today's era of globalization, international trade is one of the most important pillars of a country's economic growth. As interactions between countries in the world increase, the need for an effective and fair dispute resolution mechanism becomes increasingly important. International trade disputes often arise due to various problems, ranging from differences in interpretation of trade agreements to alleged violations of agreed international trade norms.

International trade disputes can be defined as disputes or conflicts between two or more countries relating to trade practices between countries, including but not limited to tariffs, quotas, subsidies, and other trade barriers. In the context of international trade, dispute resolution plays an important role in ensuring that trade relations between countries run smoothly and fairly, so as not to disrupt cross-border trade and investment flows.

Therefore, disputes arising from international trade transactions require an institution that regulates international trade relations. In response, countries around the world agreed to create a multilateral agreement agreed by 23 countries:*General Agreement on Tariffs and*

Trade(GATT) (Solikhin, 2023). These countries plan to form a special agency called*International Trade Organization* (ILO) under the jurisdiction of the United Nations (UN), which is responsible for conducting international trade. However, in the end, the ILO did not become an institution specifically formed to regulate international trade.

After that there was a vacuum in the organization that created the rules of international trade, so GATT was appointed as the organization that created the rules of international trade. However, GATT still had a weakness, namely that it did not have a body that adjudicated disputes arising from interactions between countries in international trade. This would be the basis for the formation of a new international organization tasked with creating and implementing international trade rules, as well as a body that was authorized to resolve disputes between countries in the field of international trade.

In this case, the WTO was formed to create a healthy competitive climate in the field of international trade for its member countries.*World Trade Organization*(WTO) is an international organization engaged in free trade (Aprita & Adhitya, 2020). WTO is a continuation and refinement of the*General Agreement on Tariffs and Trade* (GATT) which was formed in 1947. However, GATT and the organizations and regulations it produced were still temporary. The establishment of *World Trade Organization* (WTO) introduced the concept of trade liberalization to the world, especially its member countries. The basic concept of trade liberalization is to eliminate barriers to international trade.

The purpose of establishing the WTO is to regulate, implement, and monitor all international trade issues. The WTO was established to improve the welfare of its members through wider trade. This can be achieved through multilateral trade policies that are agreed upon fairly, transparently and balance the needs of all member countries (Raj, 2008). The functions of establishing the WTO are as follows:

1. Means of administration of various agreements reached in the field of goods and services, both multilateral and plurilateral during the Uruguay Round, as well as a body that monitors the implementation of market access commitments in the tariff and non-tariff fields.
2. This body regularly monitors international trade practices and uses reporting procedures to review the trade policies of member countries.
3. Provide a dispute resolution forum and arbitration mechanism to resolve commercial disputes.
4. Provide technical assistance required by Member States, including developing and least developed countries, in implementing the outcomes of the Uruguay Round.

Another important function of the WTO is to act as a mediator to resolve disputes based on the laws and rules of its member countries. Furthermore, the WTO forms *Disputes Settlement Body* (DSB) as an international body to resolve trade disputes within the framework of the WTO Forum. This mechanism refers to the dispute resolution system contained in*Understanding on Rules and Procedures of Disputes Settlement* (DSU). To ensure that all these arrangements are effective, In order to ensure that all these regulations are effective, the continuity of the dispute resolution process in the WTO is a separate obligation (D, 2013). In further developments, the WTO dispute settlement system developed into an adjudication mechanism, and in this development a standard-based dispute settlement mechanism was implemented. This system includes formal procedures that must be followed and the implementation of each decision. The WTO dispute settlement mechanism was developed by considering the national interests of member countries in order to realize the interests of the international community (Adolf, 1996).

Another role of the WTO is to be a forum for the settlement of disputes based on law for its members. This is a major difference from its predecessors, *International Trade Organization* (IT). As a result of the WTO's predecessor negotiations, namely *General Agreement on Tariffs*

*and Trade*1947 (GATT 1947), ITO failed to satisfy its members due to various weaknesses, including (Stoll & Fchorkopf, 2006):

1. The dispute resolution procedure is based on*power-based approach*, not based on *rule based approach*.
2. The absence of uniformity in the dispute resolution mechanism provided by the WTO Agreement.
3. The decision of the Dispute Resolution Panel is not automatic and must be followed up immediately by the affected parties. This situation creates legal uncertainty.
4. Currently there is no compliance with the implementation of dispute resolution body decisions, and no mechanism to compel certain parties to immediately implement decisions.
5. At that time, the time required to comply with dispute resolution procedures was still uncertain, and often dispute resolution procedures took a long time

The Dispute Settlement Body (DSB) is an international organization for the settlement of commercial disputes under the auspices of the WTO and is a dispute settlement system regulated in the Dispute Settlement Rules and Procedures Understanding (DSU). The sustainability of the dispute settlement mechanism in the WTO is very important to ensure the effective enforcement of all regulations. This is not only to ensure effective dispute resolution, but also to emphasize the quality of international trade, where each member country is expected to comply with and implement mutually agreed agreements in the field of international trade. Therefore, the WTO dispute settlement system must provide balanced protection to all its members (Erskine, 2003).

DSU is a dispute settlement system that covers all WTO agreements. Its existence confirms the absence of a dispute settlement system regulated by all WTO agreements. DSU is thus an agreement on the hopes and determination of member countries to build a better dispute settlement system than before. This includes a more effective system, guaranteeing legal certainty and ensuring the creation of free and fair multilateral trade (Herlina, 2007). In the WTO there is only one*Dispute Settlement Body*(DSB), which plays a role in resolving disputes and problems arising from each agreement contained in the final law. This body has the authority to form committees, approve committees and file appeals, make recommendations, and impose penalties if the parties do not comply with its recommendations (Solikhin, 2023). The stages that must be passed in the dispute resolution process through the DSM are as follows: (D, 2013).

1) Consultation
   Counseling is highly recommended as the initial step of DSU. Involvement of third parties in this advice is also allowed. Consultation must be done in good faith and within a period of not more than 30 days from the date of application.
2) Good Offices, Conciliation and Mediation
   This method is a model of peaceful dispute resolution by involving third parties, the stages are carried out voluntarily, and in its implementation it is confidential.
3) Formation of Panel
   The establishment of a panel is a last resort and is automatic in the WTO dispute settlement process. The WTO Agreement provides that if the panel function is performed by the WTO General Council, the DSB must establish the panel within 30 days of the request, unless the parties agree to the abolition of the panel.
4) Appeal Examination
   The DSM-WTO provides the possibility of appeal for Parties who disagree with the Panel report. However, objections that can be submitted are limited to legal issues contained in the report and the legal interpretation of the panel. Appeals cannot be submitted to change existing evidence or new evidence.
5) Implementation of Decisions and Recommendations

Implementation of decisions and recommendations is considered a critical point in the dispute settlement process. It determines the credibility of the WTO, including the effectiveness of WTO dispute settlement itself. The DSB will submit a report within 30 days of publication.

6) Arbitration
The function of arbitration is only to resolve some aspects or parts of a dispute. The purpose of the arbitration process is not to resolve the subject matter of the dispute. WTO arbitration only resolves the question of whether the panel's decision or recommendation has been complied with and implemented.

Based on the description above, the author is interested in conducting research entitled "Mechanism for Settlement of International Trade Disputes: Analysis of the Effectiveness of Arbitration and Litigation under the WTO". This paper will focus on discussing the mechanism for settling international trade disputes through the WTO, as well as measuring the effectiveness of Arbitration Litigation in the dispute resolution mechanism. In the context of globalization and economic integration between countries, the settlement of international trade disputes is an important issue that requires an effective and fair mechanism. The World Trade Organization (WTO) provides a dispute settlement mechanism to facilitate negotiation and dispute resolution between member countries. However, the effectiveness of the dispute settlement mechanism, especially in the form of arbitration and litigation, is still a matter of debate. So the author would like to discuss the following problem formulation, How is the arbitration mechanism for resolving international trade disputes implemented under the WTO? What are the advantages and disadvantages of the arbitration mechanism in resolving international trade disputes under the WTO?

In recent years, the dispute settlement system under the auspices of the World Trade Organization (WTO) has always been a major challenge, especially in relation to the crisis that has hit the world. *Appellate Body* as one of the main lines of dispute resolution mechanism. The crisis began when the United States consistently blocked the appointment of new members to the*Appellate Body*, which ultimately hampers performance and disrupts the normal functioning of the WTO dispute settlement system as a whole (Elsig et al., 2021). As a result of this stagnation, the arbitration mechanism has played an increasingly important role, especially through the Multi-Party Interim Scheme*Appeal Arbitration Arrangement* (MPIA), as an alternative to contesting the settlement. initiated by the European Union together with a number of other member states as a temporary solution in the face of deadlock at the appellate level ((WTO), 2020)

Arbitration in the WTO mechanism is now the main option for member countries who want to avoid deadlock in the system. *Appellate Body*, which is no longer functioning due to the obstruction of the appointment of new members. Arbitration offers a faster and more flexible way of resolving disputes compared to traditional appeal mechanisms (Bown & Hillman, 2019). This is very important, especially for cases that require immediate decisions in order to maintain the stability of international trade. However, they also highlight several limitations in this mechanism. One of them is the lack of transparency in the decision-making process. In addition, arbitration relies heavily on agreements between the disputing parties, which can ultimately affect the effectiveness and legitimacy of the results achieved.

Arbitration mechanisms are relatively effective when resolving trade disputes with developed countries in the context of the WTO, mainly because they have greater capacity to access the necessary legal and technical resources (Pauwelyn, 2022). However, the effectiveness of the arbitration process in developing countries still faces various obstacles caused mainly by limited financial resources, technical capabilities, and access to international legal professionals who have experience in world trade disputes. In addition, there are other challenges that are in line with arbitral decisions, but remain very important, especially when

the results of the decision are considered inconsistent with the national interests of the country, creating the possibility of resistance to its implementation (Shaffer et al., 2021).

METHOD

Method can be simply understood as a way, technique, or steps in carrying out an activity. In the context of research, the method refers to the way or technique used in the research process. If the research focuses on legal studies, then the method used is called the legal research method (MUHAMMAD SIDDIQ ARMIA, 2022). To support the development of legal science, it is not enough to just study the normative system. It is also important to conduct legal research based on the reality of how the law is applied in everyday life, where the law is created and applied by people living in society (Muhaimin, 2020). Legal research needs to go beyond explanations from a normative perspective (rules only) to understanding the social situation and application of the law. This involves understanding how the law is applied in practice in society, groups, institutions, or certain authorities. Therefore, this type of research is normative juridical. Case approach*(case approach)*This approach is intended to examine in depth how standards or regulations apply to legal practice. The focus of this approach is to understand the extent to which applicable legal rules are applied in various specific cases that have been determined. This approach involves cases determined by the judicial body that can be used as legal analytical material. This can be seen in the development of case law, where judges provide an overview of the legal pattern of actual legal application in certain cases. Therefore, this study not only seeks to understand the normative aspects of legal rules, but also seeks to assess the effectiveness and consistency of their application in the judicial system (Muhaimin, 2020).

The case-based approach is carried out by analyzing court decisions that are final and related to the problem at hand. These cases can come from within the country or from abroad. The core of this approach lies in the ratio decidendi or reasoning, namely the considerations taken by the judge when deciding a case. In practice and in an academic context, this ratio decidendi is the basis for formulating arguments in resolving legal problems. Researchers need to be aware that the case-based approach is different from a case study. The case-based approach examines several decisions as a reference for a particular legal issue, while a case study analyzes one case in depth from various legal perspectives (Santoso et al., 2022).

RESULTS AND DISCUSSION

Mekanisme Arbitrase dalam Penyelesaian Sengketa Dagang Internasional di Bawah WTO

Disputes often arise in international trade activities of countries in the world, including international trade transactions such as import and export of goods based on agreements and contracts, as well as the production of goods and services. Although there are international trade regulations such as GATT and GATS*(General Agreement on Trade in Services)*and international organizations that regulate international trade such as the WTO, but there is still the possibility of disputes arising between parties in international trade transactions.

A dispute is a dispute that arises between parties to an agreement due to a violation of the agreement by one of the parties (Amriani, 2012). From the perspective of international trade law, disputes that arise in international trade activities between countries are also a type of international dispute. A dispute can be classified as an international dispute if it is based on international law and is filed based on international law.

Therefore, an international trade dispute is a dispute between parties involved in an international commercial contract or agreement that arises due to the failure of one party to perform in accordance with the agreement, in other words due to the absence of the agreement.

An international commercial contract or agreement can be interpreted as a violation of the contract or agreement.

Therefore, arbitration decisions play an important role in resolving international commercial disputes. Arbitration decisions are independent, final and binding (similar to decisions that have permanent legal consequences), so that the chairman of the court is allowed to consider the reasons and considerations of the national arbitration decision. The term arbitration comes from the Latin word*"arbitrary"*which means "the power to resolve a case based on one's own discretion." Although the proposed definitions of the term vary among scholars today, they actually have the same core meaning.

Based on its historical origins, arbitration as a legal institution functions as a socio-economic institution that is regulated based on the terms agreed upon by the parties entering into an agreement. However, regardless of the subject matter, content, or form of the dispute, if the agreement that is the basis for resolving the dispute through arbitration contains foreign elements, then the arbitration will be considered international (Ilsan, 1992). According to Priyatna Abdurrasyid, arbitration can resolve various international disputes, including those related to trade.*(commercial)* (Abdurrasyid, 2002). Trade covers a very wide range of areas and is considered relevant not only in contract disputes, but also in joint ventures in industries such as banking, transportation, raw materials, intellectual property, construction and other business areas.

Arbitration, an institution outside the realm of general justice, is a very useful tool for resolving disputes and disagreements arising in the implementation of agreements and contracts, both at the national and international levels, especially in the context of private law. The use of arbitration courts usually occurs in the context of commercial, commercial and investment contracts. Arbitration institutions are widespread, especially among international businessmen. With the rapid development of the business world, the use of this institution continues to increase.

Frank Elkouri and Edna Elkousi in their bookHow Arbitration Worksstated (Simatupang, 2003): "Arbitration is a simple proceeding voluntary chosen by parties who want a disputes determined by an impartial judge of their own mutual selection, whose decision based on the merits of the case, they agreed in advance to accept as final and binding". In other words, arbitration is a process whereby a dispute is resolved or ended by a group of individuals or judges chosen based on the agreement of the disputing parties, and the parties submit to the decision taken by the chosen judge or agree to abide by it.

There are two international agreements regarding arbitration, namelyConvention on the recognition and enforcement of foreign arbitrase awards(New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) andConvention on the settlement of investments dispute (ICSD / Washington Convention). This agreement contains provisions in the form of"the law of arbitration". If the country where the award is enforced considers the award to be a national decision, then the award is not subject to the New York Convention and can be reviewed based on the country's discretion, which may allow for review (Agnes, 1995). The basic principles of arbitration are as follows:

1. Principle of Autonomy of the Parties
   When resolving disputes through arbitration, the parties have the right to decide for themselves what procedure to use, what authority to grant to the arbitrator, and what type of penalty to apply in relation to a particular dispute (it is said that the law of arbitration is*"Law of the parties"* And *"Law of procedure"*) (Abdurrasyid, 2002).
2. Principal competence-competence
   This principle is generally accepted as the principle of international commercial arbitration. This principle includes the determination of the authority of the arbitration institution. Based on the authority granted through the appointment of the arbitrator by

the parties, the arbitration institution, in this case the arbitrator, has the authority to decide for itself what is its authority.

3. Principle *Easter is to be kept*
   This principle states that the agreements made in a contract bind the parties as per law and must be carried out in good faith. This principle began and developed in the Agreement Act or Contract Law.
4. Principle of Good Faith
   This foundation fits the foundation *"Agreements are to be kept"*which must be implemented by the parties before, during and after the arbitration procedure.
5. Principle of Efficiency
   This term or principle is not found in national or international legal instruments. The principle of efficiency is required and is realized in the implementation of judicial procedures and the enforcement of arbitral awards.
6. Principle *Listen And The Other Side*
   The disputing parties have equal rights and opportunities to express their views in the arbitration procedure *(listen to the other side as well)*. This is a manifestation of the principle of justice and balance in arbitration.
7. Principle *Private* And *Confidential*
   This principle is the main advantage of arbitration in resolving business disputes. Because, the parties actually do not want the nature, content, process, and subject of the dispute to be announced to the public.
8. Principle of Separation *(Separability)*
   The doctrine of separability states that an agreement containing an arbitration clause is a separate agreement from the main agreement. Therefore, an agreement containing an arbitration clause is two separate agreements.
9. Principles of Limiting Court Involvement
   The existence of a written arbitration agreement eliminates the right of the parties to submit a dispute resolution or difference of opinion included in the agreement to the District Court.
10. Principle of Place of Residence *("Seat principle")*
    This principle is the basis of arbitration law. The parties to an arbitration dispute are usually free to choose the Arbitration Law, but remain bound by the arbitration law of the country where the arbitration takes place, as well as several other laws and regulations relating to the arbitration process.*(Lex Arbitry)*.
11. Principle *Fair and Equitable Treatment*
    This principle requires fair and equal treatment of the parties. This principle requires the neutrality of the arbitrator or arbitration panel so as not to give preferential treatment to any party.

Arbitration is a method of resolving civil disputes outside the general courts based on a written arbitration agreement between the disputing parties. Alternative dispute resolution outside the courts promises several advantages compared to going through the courts. The advantages mentioned are as follows. The arbitrator chosen by the parties is an expert in his field and therefore understands the issues at issue. The element of expertise plays an important role in arbitration, with expertise being one of the guarantees of trust and the second is confidentiality. As mentioned above, arbitration is a private dispute resolution forum. In general, the parties do not want the general public, especially competitors, to know their secret "cooking" which could damage the company's reputation.

Arbitration settlement can be done by individuals or bodies. Currently, arbitration is increasingly used to resolve domestic and international commercial disputes. Regarding when

to choose a settlement, the arbitration process is divided into two parts, namely: *arbitration clause* and *submission agreement*. The first is the arbitration procedure embedded in the parties' contract, and the second is the steps taken by the parties to submit the dispute resolution to arbitration (Aprita & Adhitya, 2020). Before you can use an arbitration clause, you must first meet several requirements as follows:

1. The arbitration agreement must be in writing;
2. regarding an existing or potential dispute;
3. the dispute concerns the legal relationship between the parties, whether contractual or not;
4. the dispute is a matter that can be resolved by arbitration

In addition, two additional provisions were added. The parties have the opportunity to choose arbitration and the arbitration clause is permitted under the laws of their respective countries. There are several reasons why with the development of dispute resolution practices, arbitration institutions are now increasingly used to resolve disputes, especially corporate disputes, namely (Aprita & Adhitya, 2020):

1. Dispute resolution is relatively faster than litigation in court. The arbitration process cannot be appealed, reversed, or reviewed. The arbitration award is final and binding.
2. Dispute resolution through arbitration is confidential, both in terms of the confidentiality of the trial process and the confidentiality of the arbitration decision.
3. The parties have the freedom to choose an arbitrator they consider neutral and expert in resolving disputes. The parties are completely free to choose their arbitrator, and the arbitrator chosen is not necessarily a legal expert, but could be an engineer, insurance expert, banking expert, and others.
4. The arbitrator can (if the parties so desire) decide the dispute based on expediency and expediency.
5. In international arbitration cases, the enforcement of arbitration awards in other countries is relatively easier than resolving disputes in court.
6. In arbitration, the parties also have the freedom to determine the procedural law and conditions that form the basis for the arbitration decision, for example in determining the procedural law and the law applicable to the subject matter of the dispute.

Due to the nature of arbitration explained above, the dispute resolution process through arbitration is private and the decision will not be published. This is different from the public dispute resolution process in court. Based on the explanation above, we can expect that economic actors will choose laws that are more beneficial to them by avoiding dispute resolution through the courts.

Advantages and Disadvantages of Arbitration in Settling International Trade Disputes.

The WTO dispute resolution mechanism in international trade is an important part of the international legal system, which aims to ensure compliance with agreed trade agreements. One of the fundamental principles underlying this mechanism is Pacta Sunt Servanda, a principle in international law that states that every agreement that has been ratified by a country must be respected and implemented (Lawrence, 2020). Within the WTO framework, this principle states that every country that is a member must comply with the provisions and agreements that they have ratified. Thus, any violation of the agreement can be resolved through the dispute resolution procedures that have been set. This rule shows how important it is to maintain stability and certainty in trade interactions between countries.

In the dispute situation between the US and China, the application of the Pacta Sunt Servanda principle is seen in action. The US policy of imposing high tariffs on goods from China is considered a violation of the promises agreed in the WTO agreement (Smith, 2021). In such circumstances, China has the right to file a claim and use the settlement process through the Dispute Settlement Body (DSB), which shows the function of the WTO legal system in

enforcing compliance with international agreements. However, this process often encounters obstacles, especially when the alleged violating party is one of the world's largest economic powers, such as the United States.

In addition, there is another important issue, namely the application of the principle of Distributive Justice in the dispute resolution process. This principle emphasizes that the outcome of the settlement process must take into account the balance of interests between large and small countrie (GUPTA, 2021). Developing countries often feel marginalized in this process due to limited resources and legal capabilities that are not comparable to developed countries. Therefore, the WTO must ensure that every decision in dispute resolution not only benefits large countries, but also takes into account the interests of small and developing countries.

In the dynamic world of global business, commercial disputes are often unavoidable. Given the complexity of differences in laws and interests between countries, effective solutions are essential to ensure the smooth flow of international trade. One approach that is gaining attention is arbitration, which provides a solution outside the traditional court system.

Arbitration as an alternative method of dispute resolution is considered an effective and fair method. The contribution of this institution to the development of international law as a whole is very important (Adolf, 2012). However, the arbitration forum also has weaknesses that must be considered by both parties before deciding whether to file a lawsuit.

Arbitration has many advantages, making it an attractive option when resolving international commercial disputes. First, arbitration increases the flexibility of the dispute resolution process. Parties can select arbitrators with specific expertise in areas relevant to them and tailor the arbitration process to suit their needs. The main benefits of arbitration are: (Aprita & Adhitya, 2020).

1. Dispute resolution through arbitration is relatively faster than litigation in court, because there is no appeal, cassation, or judicial review in arbitration (Aprita & Adhitya, 2020).
2. Confidentiality, Arbitration proceedings may also be conducted confidentially at the request of the parties (Aprita & Adhitya, 2020). In Appendix 3 WTO*Dispute Settlement Understanding* states that the parties can decide for themselves whether the cases they file should be kept secret from the public.
3. As a general rule, arbitral awards are binding and final. This is confirmed in Article 30 of the International Law Commission Arbitration Rules which states that arbitral awards are binding on the parties to the dispute as soon as they are announced.
4. Free to choose an arbitrator, The disputing parties can freely choose an arbitrator who will resolve their dispute.
5. Solved by its members (experts), In the case of settlement through arbitration, an expert is not required because the disputing parties can appoint an expert who understands the dispute as an arbitrator.
6. It is a final decision*(final)* and binding *(binding)*, Arbitral awards are generally considered final and binding (no appeal). However, if there is a law in the relevant jurisdiction that requires the enforcement of an arbitral award by a court, then the court must ratify it and is not entitled to consider the (substantive) issues of the award.

Free to choose the applicable law, The parties are free to choose the applicable law, which is usually stated in the contract of the parties. Especially for parties with different citizenships, the parties have the freedom to choose the applicable law in accordance with the principle of choice of law in international civil law (IHL). This is because each country has different IHL regulations (Asyhadie, 2009).

Although arbitration has many advantages, it actually also has several disadvantages. If the purpose of developing arbitration is to overcome the cessation and freezing that often occurs in litigation, it turns out that arbitration itself is not always able to meet the initial expectations. Disputes are very accumulated and the arbitration method can be very formal, imitating the pattern of litigation. Long schedules increase costs and often delay the process. In addition, the quality of decisions in the arbitration process may be low because there is no obligation to follow precedents or previous arbitration decisions. In arbitration, the process can be very formal and strict. Here are the disadvantages of arbitration:

1. The decision depends on the arbitrator's technical ability to reach a decision that is satisfactory and in accordance with the parties' sense of justice.
2. If the losing party in an arbitration is reluctant to enforce the award, a court order is often required to enforce the award.
3. If the losing party in an arbitration is reluctant to enforce the award, a court order is often required to enforce the award.
4. In practice, the recognition and enforcement of foreign arbitral awards often still encounter difficulties.
5. The disputing parties in arbitration are usually large companies. Therefore, it is not easy to jointly reflect the wishes of the disputing parties in the arbitration process.
6. The arbitration institution does not have the authority to conduct arbitration proceedings.
7. Disputes often arise in various cases because the parties do not comply with the settlement results reached in arbitration.
8. Lack of awareness of the parties' business ethics poses a challenge to arbitration as an out-of-court mechanism, which relies solely on the parties' business ethics to achieve a fair and sustainable settlement.

CONCLUSION

Arbitration is an alternative dispute resolution outside the court based on a written agreement between the disputing parties. In the international context, arbitration plays an important role in resolving disputes in various fields of trade and industry. The term "arbitration" comes from the Latin word "arbitrare", which means "the power to resolve a case according to one's own discretion". Arbitration respects several basic principles, including the principles of party autonomy, competence, legal obligations, good ethics, efficiency, mutual hearing, privacy and confidentiality, separation, limitations on judicial involvement, and venue, and must be fair and equitable. The advantages of arbitration include rapid resolution, confidentiality, and freedom to choose an arbitrator. If the parties fail to meet the requirements of the rule of good faith, the arbitration award will be considered non-final. Therefore, the selection of arbitration as a method of dispute resolution must be done carefully by considering all relevant aspects and principles.

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