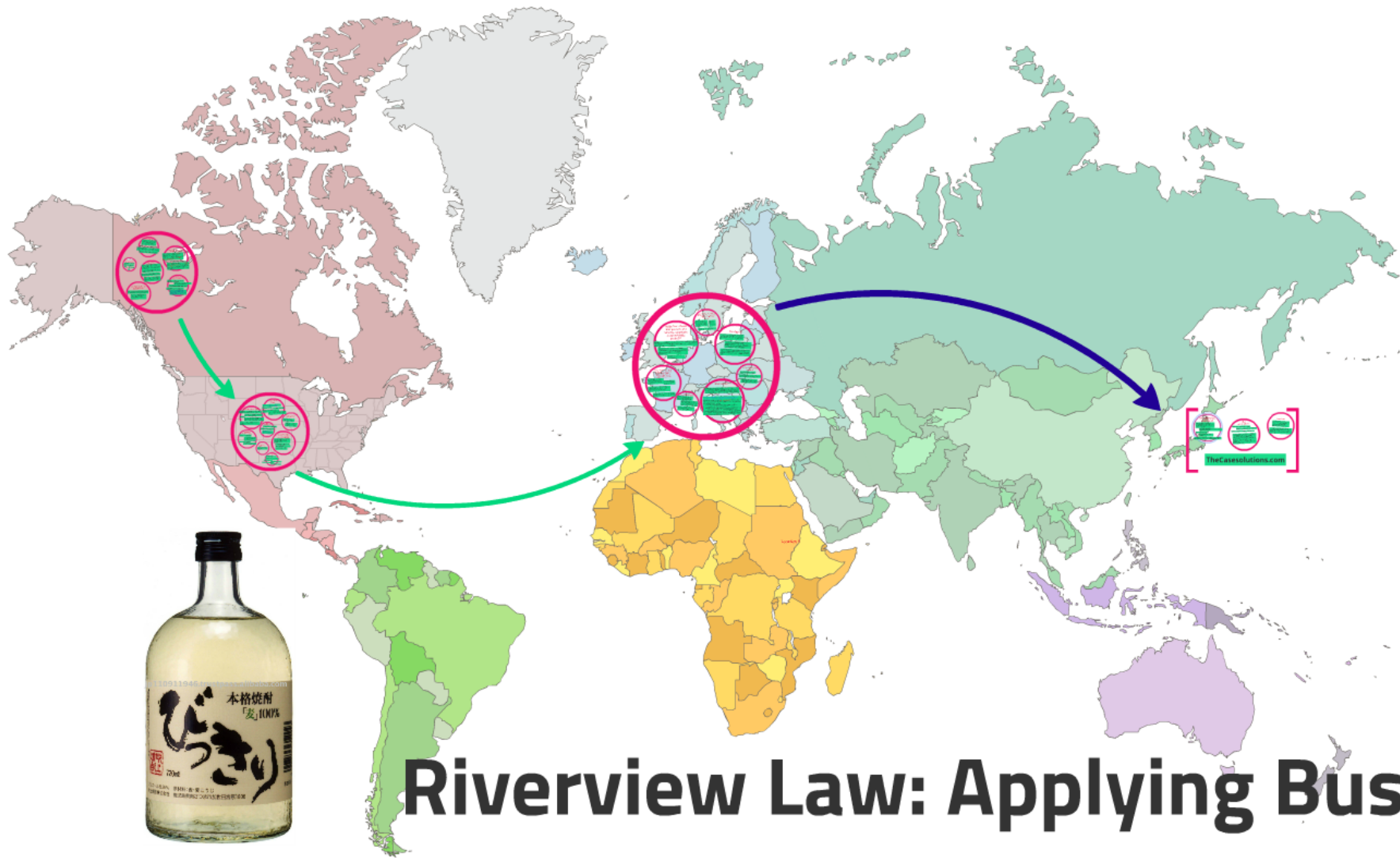
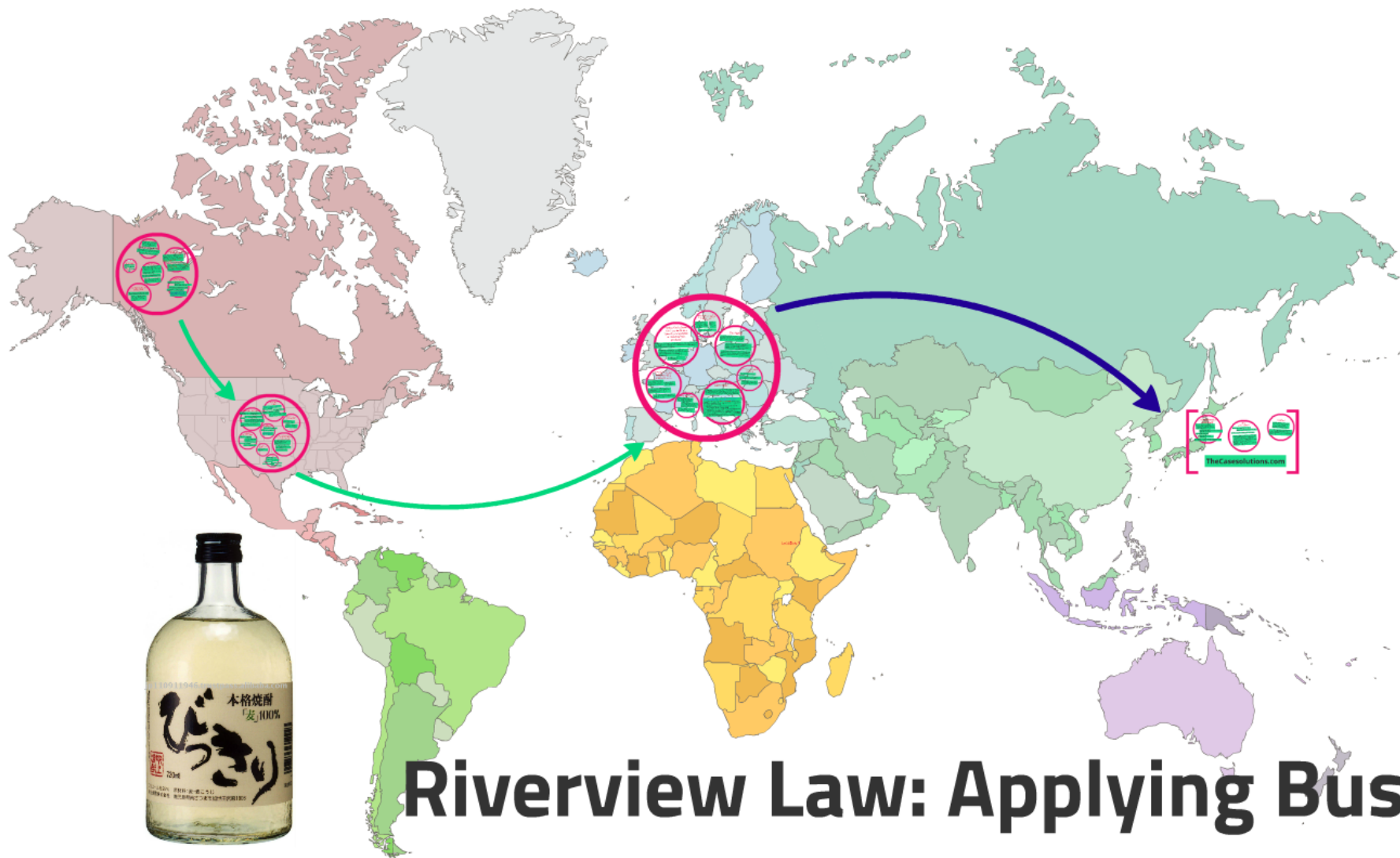




Riverview Law: Applying Business Sense to the Legal Market

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The Parties

The Complainants:

The European Community

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Canada

The United States

The Defendant:

Japan

the issue

Measure: Japanese Liquor Tax Law that established a system of internal taxes applicable to all liquors at different tax rates depending on which category they fell within.

The tax law at issue taxed shochu at a lower rate than the other products.

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Products: Vodka and other alcoholic beverages such as liqueurs, gin, genever, rum, whisky and brandy, and domestic shochu.

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The Significance of
this decision:

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This is the leading WTO case on
the DCS system: Directly
competitive or substitutable
products.

Complaints of the European Community:

Claimed spirits are "like products" to both subcategories A and B of shochu.

'Likeness' being based on both products' end uses and physical characteristics

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Consequently, argued that the Liquor Tax Law violates GATT Article III:2, sentence one.

"The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products."

Relevant Provisions: Articles III:1 and III:2 of GATT

1. The contracting parties recognize that **internal taxes** and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, **should not be applied to imported or domestic products so as to afford protection to domestic production.**

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2. The **products** of the territory of any contracting party **imported** into the territory of any other contracting party **shall not be subject**, directly or indirectly, **to internal taxes** or other internal charges of any kind **in excess of those applied**, directly or indirectly, **to like domestic products**. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

Brief Facts:

A 1987 WTO Panel, which dealt with the same issue, “found sufficient evidence of fiscal distortions of the competitive relationship between imported distilled liquors and domestic shochu affording protection to the domestic production of shochu”

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Complainants claimed that spirits exported to Japan were discriminated against under the Japanese liquor tax system which levies a substantially lower tax on shochu” than on whisky, cognac and white spirits.

They claimed that higher rates of taxation on imported spirits is inconsistent with Article III:1 and 2 of GATT

Conclusions and Assessment

Ramon R. Gupua. Appellate Body Interpretation of the WTO Agreement: a Critique in Light of Japan - Taxes on Alcoholic Beverages.

Second completed case of the WTO dispute settlement procedure.

Failed to define terms.

Shift from the 1947 GATT resolution.

WTO originated in response to frustration with the inadequate, highly diplomatic dispute resolution system of the GATT 1947,

Other Considerations:

Expectations of the Appellate Body.

Decisions are persuasive; not binding.

Likelihood of future inadequate interpretations?

"In sum, the Body's interpretation leaves Members [of the WTO] with no clear test enabling them to determine if another party's allegations of discriminatory taxation are valid. In determining if products are "directly competitive or substitutable," each case will rest not on predictable guidelines, but rather the Panel's case-by-case determinations."

Questions

1. Do you think the tests set out in this case to determine like and dcs products provide guidance for other disputes?

2. Is it fair to require Japan to change its tax laws when they claim there was no intention to afford protection to domestic production?

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