Judicialization of the Dispute Settlement Mechanisms in Asian Economic Integrations?: Expectation, Reality and Ways Forward

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1. Introduction

1.1 Web of Asian Economic Integrations

Since early 2000s, we have been witnessing the proliferation of Asian Economic

Table 1 Proliferation of Asian Economic Integrations

AEIs	Members	Effect/Complete	Scope	Note
AFTA	ASEAN10	1993/2010/2015	G	2.5%
ACFTA	ASEAN10-China	2004/2010/2015	G, S	
AKFTA	ASEAN10-Korea	2007/2010/16-18	G, S, IP, IV	
AJCEP	ASEAN10-Japan	2008-9/	G	
AIFTA	ASEAN10-India	2010/2013	G	
AANZFTA	ASEAN10-Aus-NZ	2010/2013/	G, S, IP, IV	
ECFA	China-Taiwan	2011/----	Part of G, S	
TPP	(P4) Brunei, Chile, NZ, Singapore + (New) Australia, Malaysia, Peru, US, Vietnam	(P4 2006) Negotiation	(P4 G, S, IP) G, S, IP, IV etc.	27.4% of World GDP Japan to join?
ASEAN+3/6	ASEAN10+China, Japan, Korea/India, Australia, NZ	Study 2005 Consult 2009	G, S?	19.2%/23.0%
CJKFTA	China-Japan-Korea	Study	G, S?	16.7%
FTAAP	21 APEC members	Proposed 2006	G, S?	52.9%

Note: G: Trade in Goods, S: Trade in Services, IP: Intellectual Properties, IV: Investment

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Integrations (hereinafter "AEIs")[1]. Table 1 above shows part of the phenomenon. The ASEAN Free Trade Area (hereinafter "AFTA") was a pioneer in the field while the Cross-Strait Economic Cooperation Framework Agreement between China and Taiwan (hereinafter "ECFA") may be the latest one. With a core of the AFTA, a lot of AEIs create a web of trade and investment liberalization.

In addition to those which have already entered into force, there proposed some other Free Trade Areas (hereinafter "FTAs"), which are now under negotiation, consultation and study, respectively. For example, the Free Trade Area of the Asia-Pacific, which was proposed in APEC Summit 2006, would, if created, have a geographically very broad coverage around the Pacific Ocean and great economic significance representing 21 economies with more than half of the world GDP. Even the Trans-Pacific Partnership Agreement (hereinafter "TPP"), which is now under intensive negotiation among and hotly debated in Japan on whether it should join, will cover at least nine countries which amount more than a quarter of the world GDP. Though the proliferation of AEIs is beneficial to Asian as well as Non-Asian individuals and companies, one of its problematic aspects is complexity or "spaghetti bowl" which is caused by lack of harmonization of rules among AEIs. It is not predicable whether they are unified or harmonized into a single super-regional integration and which model will prevail.

1.2 Proliferation and Fragmentation of International Judicial Tribunals

Along with the proliferation of regional economic integration including AEIs,

[1] It is noteworthy that ASEAN also signed the ASEAN Framework Agreement on Services (hereinafter "AFAS") in 1995 and the Framework Agreement on the ASEAN Investment Area (hereinafter "AIA") in 1998. More recently, on 17 May 2010, ASEAN Trade in Goods Agreement (ATIGA) entered into force. The ATIGA is an enhancement of the CEPT-AFTA into a more comprehensive legal instrument. With this, some ASEAN agreements relating to trade in goods, such as the CEPT Agreement would be superseded by ATIGA.

another remarkable but also concerned phenomenon is a proliferation and fragmentation of international judicial tribunals, especially in economic areas (UNILC 2006). In the field of trade, the World Trade Organization (hereinafter "WTO"), which was established in 1995, introduced the highly judicialized dispute settlement mechanism, based on the panel procedures which developed throughout the history of the General Agreement on Tariffs and Trade (hereinafter "GATT")[2]. Also on investment, there are a lot of arbitral tribunals, among which the International Centre for Settlement of Investment Disputes (hereinafter "ICSID") under the auspice of the World Bank is the most frequently used for the settlement of the so-called "investor-state" dispute[3].

In addition to these multilateral fora, there proliferate a lot of dispute settlement mechanisms (hereinafter "DSMs") in regional economic integration. The European Court of Justice (hereinafter "ECJ") in the European Union (hereinafter "EU") is one of the most advanced and judicialized systems, which is almost a domestic court. Besides, the North American Free Trade Agreement, which entered into effect in 1994, has introduced the so-called Chapter 20 arbitration procedure which is very similar to the DSM of the WTO. Similar examples are also found in the South American integration, Mercosur as well as the South African integration, Southern African Development Community (hereinafter "SADC"). As shown in Section 2 below, AEIs seem to follow this trend and contribute to such proliferation and fragmentation of judicial tribunals around the world (e.g., ASEAN Protocol on Enhanced DSM , Ch.17 of AANZFTA and Ch.9 of AJCEP).

A multidisciplinary research on the phenomenon of "Legalization" in world

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[2] *See* Petersmann (1994: 1211, 1215 and 1224) ("(quasi-)judicialization"); Jackson(1998) ("more judicialized"); Weiler (2000:2-3)("juridification", "juridified").

[3]

politics by Goldstein *et al*. (2000) offers the clear perspective on Legalization as well as judicialization. Referring to the insight of Goldstein *et al*.(2000), Abbott *et al.* (2000) and Keohane *et al*. (2000) that the essential feature of judicialization is "delegation" of dispute settlement from disputing countries to the third parties, Kawashima (2005) develops the analytical framework of judicialization and applied it in analyzing the extent and nature of that of the WTO DSM. Kawashima (2005) offers the following three dimensions and, at least, six sub-factors to be used in measuring the extent and nature of judicialization of DSMs:

A.1 Access: Who can initiate the procedure? (Only state or private sector? i.e., standing)

A.2 Access: How do they initiate it? (Non-conpulsory or compulsory jurisdiction)

B.1 Interpretation: Who interprets rules? (Disputing parties or independent third party)

B.2 Interpretation: How do they interpret rules? (Political persuasion or legal interpretation)

C.1 Enforcement: Who monitors compliance? (Collective or individual surveillance)

C.2 Enforcement: How do they enforce compliance? (Only peer pressure, trade sanction or embedded into domestic legal order)

According to Kawashima (2005), the WTO DSM, compared with the panel procedures in the GATT, introduced compulsory jurisdiction by adopting the reverse consensus approach in establishment of panels (A.2) but still limits standing to Member countries (A.1), and thus the extent of delegation in terms of Access (A) is judged as middle. It also continues to ensure the independent nature of panelists as well as the Appellate Body and delegates them the power to interpret the WTO Agreement in

accordance of the customary rule of interpretation, i.e., Articles 31 and 32 of the Vienna Convention on Law of Treaty (hereinafter "VCLT"). Thus, the extent of delegation in terms of Interpretation (B) is judged as high. Finally, it introduced the collective surveillance system on compliance and automatic adoption of retaliation against non-compliance. However, direct embeddedness of judgments into domestic legal order like that of the ECJ is not envisaged. Thus, the extent of delegation in terms of Enforcement is judged as middle. In sum, the extent of judicialization of the WTO DSM is very high but not comparable to that of the ECJ or ICSID which accepts the petition filed by private investors.

1.3 Research Questions

Against the background above, this paper tries to answer the following questions:

1. Is there a trend toward judicialization of the dispute settlement mechanisms (DSMs) in Asian Economic Integrations (AEIs) ?
2. Even if so, what kind of limitations or constraints are there and why?
3. If we continue to have highly judicialized DSMs, unified or fragmented, what are the major challenges ahead and ways forward?

1.4 Methodologies

In order to answer the questions above, this paper adopts the following methodologies:

1. Examine the development and current features of DSMs, if any, in AEIs by applying the analytical framework above of judicialization.
2. Collect the empirical data of disputes and analyze the practices, if any.
3. Compare the experience of the DSMs in AEIs with that of the WTO Dispute

Settlement Mechanism, which is regarded as one of the most judicialized DSM.

Accordingly, Section 2 examines whether or not there is the trend toward judicialization of the DSMs in AEIs. Then, Section 3 examines their reality and tries to analyze the records so far. Finally, Section 4 introduces the experience of the WTO DSM and tries to learn valuable lessons for future design of, or remedies for, the DSM(s) in the AEIs. Section 5 outlines the tentative conclusions and recommendations

2. A Trend toward Judicialization of the DSMs in AEIs?

2.1 Overview

Table 2 above shows the features of the major DSMs of the multilateral and regional integrations including AEIs. According to the comparison, the extent of judicialization of the DSMs in AEIs are comparable to that of the WTO while some of the AEIs do not mention the surveillance system in terms of the enforcement.

Table 2 Comparison among Multilateral and Regional DSMs

DSMs	WTO	NAFTA Ch.20/11	EDSM	AJCEP	ACFTA
Coverage	G, S, IP	G, S, IP/IV	G, S, IV	G ex SPS, MR	GSIPIV
A1 Access: Who can initiate?	Members	G, S, IP: Members IV: Investors	Members	Members	Members
A2Access: How do they initiate?	Compulsory	Compulsory	Compulsory	Compulsory	Compulsory
B1Interpretation:Who interprets?	Panel/AB	G S IP:Arbitrator IV: ICSID etc.	Panel/AB	Arbitral Tribunal	Arbitral Tribunal
B2Interpretatio:How interprets?	Legal VCLT	Legal VCLT	Legal VCLT	Legal VCLT	Legal VCLT
C1Enforcement: Who monitors?	Collective Surveillance	Individual surveillance	Collective Surveillance	Individual surveillance	Individual surveillance
C2Enforcement: How enforce?	Compensation or Retaliation, Full Implementation Preferred	G, S, IP: Sanction IV: Compensation	Compensation or Retaliation	Compensation or Retaliation	Compensation or Retaliation, Full Implementation Preferred

Note: G: Trade in Goods, S: Trade in Services, IP: Intellectual Properties, IV: Investment, SPS: Sanitary and phytosanitary measures, MR: Mutual Recognitions

2.2 Case Study: ASEAN Protocol on Enhanced Dispute Settlement Mechanism (AEDSM)

The Framework Agreement on Enhancing ASEAN Economic Cooperation in 1992 provides in Article 9 that “any differences between Member States concerning the interpretation or application of this Agreement … shall, as far as possible, be settled

amicably between the parties. Where necessary, an appropriate body shall be designated for the settlement of disputes". Thus, the amicable settlement other than judicial procedure was preferred and there was no detailed provision of the dispute settlement body. This Article was significantly expanded by a Protocol on Dispute Settlement Mechanism in 1996. However, it "is yet to be invoked by any member country." (Hew 37:2005). As one of the most important reforms to ensure the achievement of the goal to establish the ASEAN Economic Community (AEC) by 2020, the ASEAN Economic Ministers' High Level Task Force (HLTF) proposed to amend the ADSM in 2003. The HLTF recommended as follows:

(i) To ensure that binding decisions can be made based solely on legal considerations, changes should be made to the procedures of the existing ASEAN DSM to *depoliticise* the entire process.

(ii) The enhanced ASEAN DSM would be *modeled after the WTO DSM*, which have already established a proven track record in resolving trade disputes. (emphasis added)

More particularly, the HLTF proposed to have "panels of three *independent professionals* from countries not involved in the disputes (including non-ASEAN countries) to rule on the disputes and administer the appellate process" and to "effective mechanisms, including the possibility of *imposing sanctions on non-compliant countries*, to ensure *full implementation* of the DSM rulings." Hew (2005:36) also commented:

"(T)he main issue lies in *the effective implementation and compliance* by member countries. For example, we observed that some member-countries back-tracking on

their AFTA commitment. It is therefore essential that the Charter be designed to ensure that the economic commitments are legally binding and that *non-compliance would result in punitive measures such as trade sanctions*. The Charter should therefore seek to give the existing ASEAN dispute settlement mechanism *some much needed 'bite'*."

Here, we can very easily find the inclination toward the judicialization. In response, the ASEAN members adopted the ASEAN Protocol on the Enhanced Dispute Settlement Mechanism (hereinafter "EDSM"), or Vientiane Protocol, in 2004, which covers all of the AFTA, AFAS and AIA. Almost all provisions of the EDSM follow the corresponding ones in the WTO DSM, including automatic establishment of the panel, independent panelists and members of the Appellate Body as well as trade retaliation against non-compliance (Vergano 2009). Accordingly, the EDSM on ASEAN Economic Agreements should be regarded as highly judicialized as the WTO DSM, in terms of the degree of "delegation" in access, interpretation as well as enforcement. Likewise, other DSMs in AEIs such as Chapter 17 of the AANZFTA, Chapter 9 of the AJCEP and that of ACFTA[4] all closely resemble that of the WTO while there are some minor differences. Therefore, it can be concluded there is the trend toward judicialization also in AEIs.[5]

3. Empirical Data of Recourse to the DSMs and Analysis

3.1 Survey of the Data

Despite expectation in introducing the highly judicialized mechanisms, the reality is disappointing. Table 3 shows the number of recourse so far to the DSMs of the

[4] Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the People's Republic of China (entered into force29 November 2004).
[5] Judicialization is also advocated regarding SAFTA. *See* Nath (2007).

WTO, NAFTA as well as three AEIs. Even taking into account of the gap in the number of Members and time period since the entry into force, it can be said there is a striking contrast between the WTO and AEIs.

Table 3 Number of Recourse to the DSMs

Agreements	Number of Cases	Since	Members
WTO	Consultations:420 Reports: 130	1995	153
NAFTA	Ch.20: 3 Ch.11: 43	1994	3
EDSM	0	2004	10
ACFTA	0	2005	11
AJCEP	0	2008	11

Maybe recognizing the data above, Woon (2009:73) noted that:

> "Paradoxically, the success of such a dispute settlement mechanism can be measured not by the number of disputes settled but rather by the scarcity of such cases. This is because where such a mechanism exists, the parties will often make the extra effort to come to terms with rather than push the matter to adjudication."

3.2 Reasons behind

However, in the light of the high expectation toward the judicialized DSM above, it is clearly disappointing data. Why didn't the ASEAN members utilize it? Vergano (2009) suspected the following four reasons:

1) Less confrontationist nature in Asian culture: The ASEAN Way[6]

2) Less legally binding rules

3) A number of procedural and institutional shortcomings

4) Fearing to trigger "tit-for tat" recourses

In support of the first factor, the EPA negotiating team of the MOFA Japan (2007:393) wrote that "(a)s the conclusion itself of EPAs has a political and diplomatic implication as *a symbol of cooperation and development of bilateral relationship*, there may be cases where careful consideration should be given to whether it is appropriate to actually resort to their dispute settlement procedures taking it just as a purely economic issue." (emphasis added). Here we can see the way of thinking similar to "the ASEAN Way" above. Therefore, it could be said the first factor contributes to some extent to failure to utilize the DSMs.

On the other hand, there are some cases where one member in the certain regional integrations, including ASEAN, has actually resorted to the WTO DSM against protectionist measures imposed by another member of the same integrations (*See* Table 4). For example, Bangladesh filed a suit against India's antidumping measures imposed on batteries products (WT/DS306). It is one of the most famous cases involving developing countries, especially because it is the only one case filed by a LDC. It is also interesting as it is a dispute between members of the South Asian Free Trade Area. Another interesting case is WT/DS371 which was filed by Philippines against Thailand within the AFTA members. It must be emphasized that the measures at issue can be attacked as violation of the AFTA and Philippines has been taking a very

[6] For critical opinion on "ASEAN Way," *see* Severino (2001). *See also* Williams (2007)(Referring to the success of the ECJ, propose to set up an ASEAN Court of Justice, among other institutional reforms, which would provide the reliability and predictability businesses need to feel comfortable investing and attract more investment into the ASEAN).

confrontationist attitude in not hesitating to request establishment of the panel. In this case, Panel report was issued and it is now at the stage of appeal. Taking into account these cases, the first and fourth factors (avoidance of confrontation or tit-for-tat) as well as the second one (less legally binding) become much less persuasive. Then other possible factors must be explored in order to explain the reason behind the inactive use of the EDSM among the ASEAN members.

Table 4 WTO Disputes Filed by the one member to another member in the same AEIs

DS No.	Complainant	Respondent	Measures	AEIs	Year of request
DS1	Singapore	Malaysia	Import Licensing on Polyethylene/Polypropylene	AFTA	1995
DS215	Korea	Philippines	AD on Polypropylene Resins	AKFTA2007	2000
DS270	Philippines	Australia	SPS on Fruits and Vegetables	AANZ2010	2002
DS271	Philippines	Australia	SPS on Pineapples	AANZ2010	2002,Panelrequested
DS306	Bangladesh	India	AD on Batteries	SAFTA2006	2004, 2006 MAS
DS312	Indonesia	Korea	Antidumping on paper	AKFTA2010	2004,2007PanelReport
DS371	Philippines	Thailand	Taxes on Cigarettes	AFTA	2008,2010PanelReport
DS376	New Zealand	Australia	SPS on Apples	ANZCER	2007

4. Experience in the DSM of the WTO and Ways Forward

In the literature on the WTO DSM, it has been hotly debated why developing members are not so active in the DSM (Bown and Hoekman 2005; Shaffer 2006; Mosoti 2006; Alavi 2007; Busch *et al*. 2009; Bown 2009; in general Shaffer and Meléndez-Ortiz 2010). As such a low profile of developing countries in the WTO DSM may suggest they cannot take full advantage of the benefits and opportunities which they should be able to enjoy from by the WTO membership and it would thus

undermine one of the goal of the WTO "to ensure that *developing countries*, and especially *the least developed* among them, *secure a share in the growth in international trade commensurate* with the needs of their economic development"(emphasis added), [7] scholars and practitioners took it very seriously. Someone argues that as developing countries are usually members of regional economic integration and their trade, export or import, concentrate among the members of such integrations, most of the disputes are settled within the regional fora and thus there is no need to resort to the WTO DSM. Based on the examination above in Section 3, it is not so persuasive. One of the more persuasive explanations is the lack of dispute-settlement-related legal capacity or lack of budget to hire external lawyers in developing members (Shaffer 2006).[8] Another candidate is lack of power to search and detect the protectionist measures, which are WTO inconsistent, due to both lack of partnership between public and private sectors and lack of knowledge about the WTO rules on the side of business which would directly be affected by potentially WTO inconsistent measures (Shaffer 2006; Bown 2009).

4.1 Dispute-Settlement-Related Legal Capacity

In terms of the lack of dispute-settlement-related legal capacity or lack of budget to hire external lawyers, there has already been invented a very effective remedy, the Advisory Centre on WTO Law (hereinafter "ACWL"). The ACWL was established in 2001 through the cooperation between some of the WTO members, both developed and developing. With the fund granted by the signatories, the ACWL will provide WTO related legal services at the more reasonable rate than usual lawyers' fee. Its legal services include legal advice on WTO consistency of domestic or trading partners'

[7] Preamble of the Agreement establishing the World Trade Organization.
[8] It is said that a WTO case costs roughly US$500,000 if taken to the Appellate Body.

measures as well as legal support in dispute settlement (ACWL 2010). It is also noteworthy that some of the services are freely provided only for LDCs (ACWL 2010).

The project of the ACWL is widely regarded as success taking into account the achievement so far. Table 5 listed the selected cases in which the ACWL has provided or is providing legal services. Very interestingly, the two cases which are pointed out as interesting in sub-section 3.2 above are in this list. Furthermore, Table 6 shows that the WTO DSM record so far of six ASEAN members plus three Non-ASEAN countries: Bangladesh, India and Pakistan. Laos is not yet the WTO member while other three have never utilized as either complainant or third parties nor been filed a suit by any WTO member. In each column, the rate of the cases supported by the ACWL is provided.

First of all, we can observe that Thailand (nine cases) and Indonesia, India and Philippines (all three cases) are among the most frequent users of the ACWL support. Secondly, they do not hesitate confrontation with not only developed and Non-ASEAN developing countries but also ASEAN friends. Third, there is a tendency that, in cases as complainants, ACWL Signatories' (10 to 66%) and LDC's (100%) rate of ACWL support is relatively high and that less developed members tend to rely much more on the ACWL support (Pakistan 66%, and Bangladesh 100%).

Table 5 WTO Disputes Supported by the ACWL (Asian countries involved case only)

DS No.	Complainant	Respondent	Measures	AEIs	Year of request
DS 192	Pakistan※	U.S.	Transitional SG on CottonYarn		
DS 243	India※	U.S.	Rules of Origin for Textiles		
DS 246	India※	EC	Conditions for the GSP		
DS270	Philippines※	Australia	SPS on Fruits and Vegetables	AANZ2010	2002
DS271	Philippines※	Australia	SPS on Pineapples	AANZ2010	2002,Panel requested
DS306	Bangladesh※	India	AD on Batteries	SAFTA2006	2004, 2006 MAS
DS312	Indonesia※	Korea	Antidumping on paper	AK2010	2004,2007Panel Report
DS 324	Thailand※	U.S.	Provisional AD on Shrimp		
DS 327)	Pakistan※	Egypt	AD on Matches		
DS 343	Thailand※	U.S.	Measures Relating to Shrimp		
DS371	Philippines	Thailand※	Taxes on Cigarettes	AFTA	2008/Panel Report 2010
DS 374	Indonesia※	South Africa	AD on Uncoated Paper		
DS 383	Thailand※	U.S.	AD on Vinyl Carrier Bags		
DS396/403	EU	Philippines※	Taxes on Distilled Spirits		

Note: AD: Antidumping measures, SG: Safeguard Measures ※: Supported by the ACWL

Based on combination of the observations above and the fact that the ACWL only provides legal services related to the WTO not related to any regional economic integration, it can reasonably be assumed that members of AEIs, especially ASEAN members, would not hesitate to take confrontationist attitude with not only developed and Non-friend developing countries but also Friend countries, if necessary and with sufficient capacity, and that, if the sufficient support is provided for AEIs members, the utilization of the DSMs of AEIs may become more active.

Table 6 The WTO DSM record of six ASEAN and three Non-ASEAN members

Member	Complainant	Respondent	Third Party	ACWL Signatory? Note
Indonesia	5 (2, 40%)	4 (0, 0%)	4 (0, 0%)	ACWL Acceded 2004
Malaysia	1 (0, 0%)	1 (0, 0%)	2 (0, 0%)	Filed by Singapore
Philippines	5 (2, 40%)	6 (1, 17%)	5 (0, 0%)	ACWL Original 2001
Singapore	1 (0, 0 %)	—	4 (0, 0%)	Vs. Malaysia
Thailand	13 (5, 38 %)	3 (1, 33 %)	45 (3, 7 %)	ACWL Original 2001
Vietnam	1 (0, 0%)	—	—	ACWL Acceded 2009
Bangladesh	1 (1, 100%)	—	1 (0, 0%)	LDC vs. India
India	19 (2, 10%)	20 (1, 5%)	64 (0, 0%)	ACWL Original 2001
Pakistan	3 (2, 66 %)	2 (0, 0%)	9 (0, 0%)	ACWL Original 2001

4.2 Capacity to Search and Detect the WTO Inconsistent Measures

Public-Private Partnership discover problems of inconsistency with AEIs rules,, to collect evidence and construct the case (Shaffer 2003 and Bown 2009).

(Uncompleted)

5. Tentative Conclusions and Recommendations

Back to the DSMs of the AEIs, it can be concluded that, though on the rule, their DSMs are highly judicialized, the reality is that there is striking contrast in terms of their utilization between the DSMs of the WTO and AEIs, and lack of trade dispute related legal capacity as well as lack of public-private partnership are among the major factors causing failure to utilize the DSMs of the AEIs. Based on such finding, the following two are highly recommended in order to promote the utilization by members, and effective operation, of DSMs and, thus to promote the security and predictability of

the rule-based legal environment in AEIs:

1) Modeled after the ACWL, an Advisory Centre on ASEAN or other AEIs Law must be established to support members lacking the trade-dispute-related legal capacity (e.g., Cambodia, Laos and Myanmar in case of the ASEAN). Through the experience of dispute supported by the centre, these members can train their staff in charge of the WTO issues. This recommendation should be extended to the future AEIs such as TPP or FTAAP.

2) In order to take full advantage of benefits of DSMs of AEIs, each member should build effective and cooperative Public-Private Partnerships in order to discover problems of inconsistency with the AEIs' rules, to collect evidence, and construct the strong case. As one of the prerequisites for that, the capacity building related to trade and investment law must be promoted not only on the side of the public sector but also on the side of private sector. Such capacity building must be essential components of "Aid for Trades" Initiatives for developing countries.

3) Even if the major reasons can be detected, it would be difficult, in short terms, to resolve the problems and remove the constraints in capacity and partnerships building. If it is the case, serious consideration must be given to a proposal to make further steps toward higher judicialization. Though the most of the DSMs of the AEIs are as highly judicialized as the WTO DSM, there are a plenty of room for higher judicialization. For example, following the models of the ICSID investor-state dispute and the ECJ, one of the options is to allow private sectors affected by rules-inconsistent measures to directly file a suit to the DSMs. However, there is a strong objection to the investor-state dispute due to the alleged "too much interference" by the arbitral tribunals into the state

sovereignty to introduce regulation for legitimate reasons. Another option is to create the virtual research institution which can detect inconsistency, collect evidence and construct the strong case on behalf of potential complaining members. This option is to also take one more step toward a criminal-prosecution-like procedures rather than civil damage-suit-like procedures which must be initiated by injured countries or companies.

(End)

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