



**Asia-Pacific
Economic Cooperation**

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Session 3

State-to-State Dispute Settlement Mechanisms in Trade Agreements - Experiments, Achievements and Challenges

Submitted by: Seoul National University



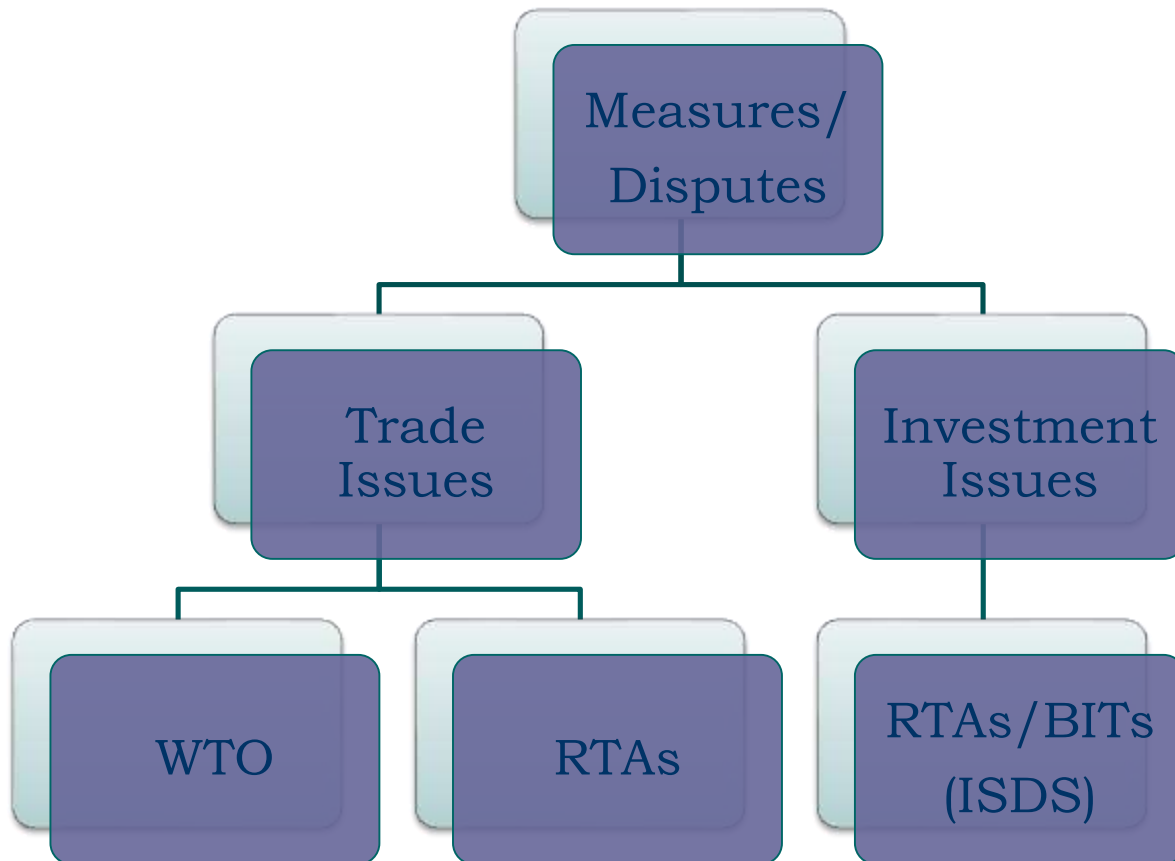
**Workshop on Current Trends on Dispute
Settlement Mechanisms in Trade Agreements
Chiang Mai, Thailand
25 August 2022**

*State-to-State Dispute Settlement
Mechanisms in Trade Agreements
- Experiments, Achievements and Challenges*

APEC Workshop on Current
Trends on DSM in Trade
Agreements

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Multiplication of DSMs



Each RTA Has Its Own DSM

- State-to-State dispute settlement
- One RTA, one DSM
- As many DSMs as RTAs
- Individual RTA, a self-contained regime
- The same, one division handles all this

In fact, More Complicated Than That...

- Each RTA contains:
 - State-to-State Panel Proceeding
 - State-to-State Mediation
 - Joint Committee
- So, the actual number is much higher
- And then, RTAs do not have a secretariat

Non-Binding DSMs

- Increasing Use of Mediation to Settle Int'l Disputes
 - Fast, Flexible, Low-cost, Party-autonomous
- Global trend
 - Useful for state-to-state disputes as well as commercial disputes
 - Valuing long-term relationship and amicable resolution of disputes
- New Momentum
 - 2019 *United Nations Convention on International Settlement Agreements Resulting from Mediation* (“Singapore Convention”)
 - 55 signatories and 10 state parties

Significant Logistical Burden

- FTAs : 339
- ISDS : FTA Investment Chapters : 324
BITs : 2,298] 2,622



Logistical Burden for APEC Economies

Disproportionate Burden for Developing ones

“Measures” Broadly Defined

Statutes

Framework

- Key requirements
- Main procedural elements
- Organizational scheme
- Setting forth trade measures

Enforcement Decree

Elaboration

- Detailed provisions for substantive issues
- Detailed provisions for procedural issues
- Setting forth division of work inside gov't
- Key definitions

Regulation

Specification

- More detailed provisions
- Practical elements for actual operation
- Deadlines and forms
- Regulates daily operation

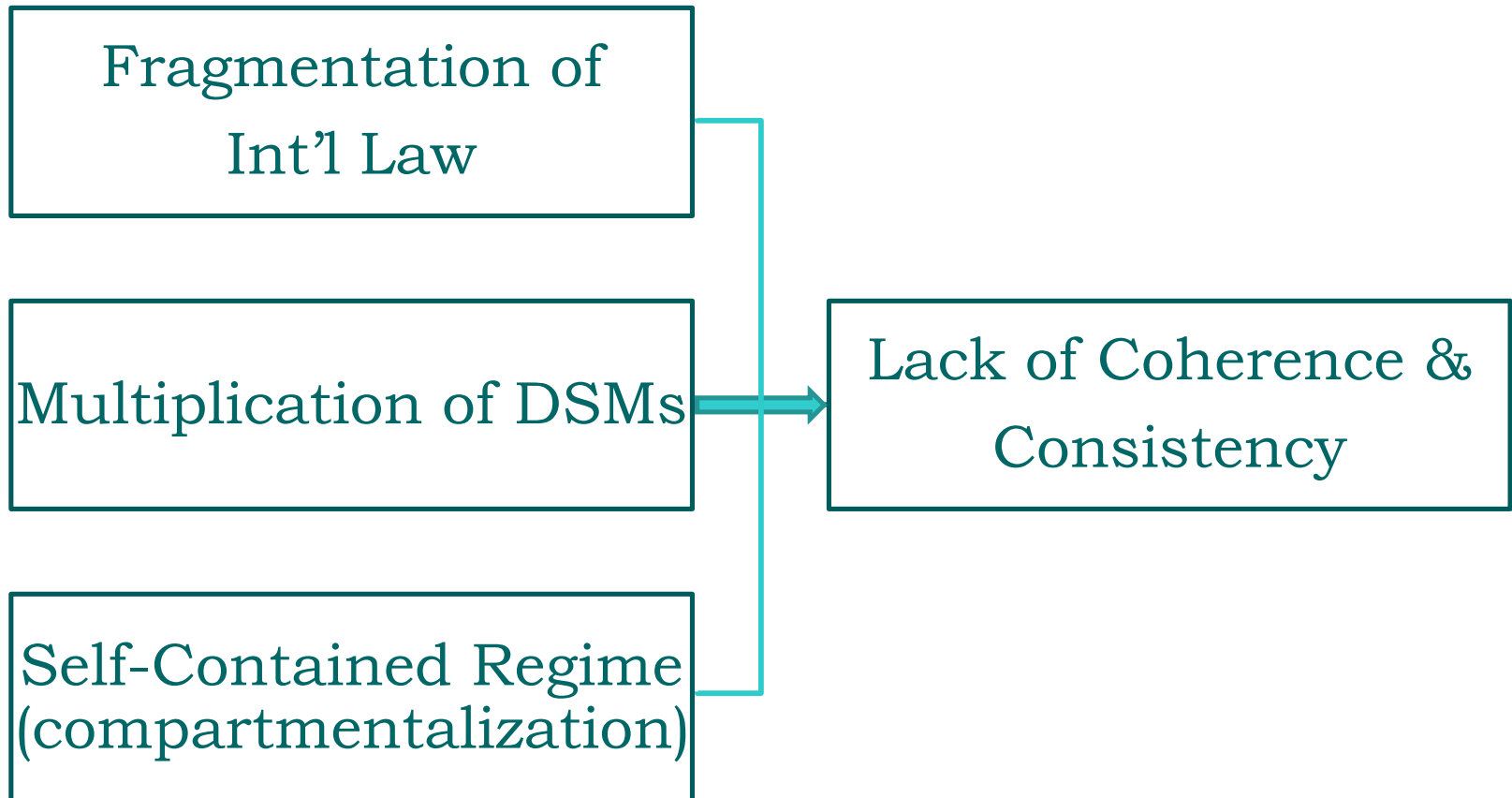
Gov't Practice

Guidelines

- Internal guidelines
- Code of conduct
- Invisible policies and understanding
- Traditional course of action

All subject to DSMs of various kinds

Challenges - Legal Problems



Challenges - DSMs via Virtual Means

- Enhancing efficiency vs. Preserving due process



Challenges - Systematization of Various DSMs in an RTA

Joint
Committee

Mediation

Binding
Panel
Proceedings

Challenges - Absence of Secretariat & Staff



Thank you
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