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A Study on China's Digital Trade Dispute Settlement Mechanism in the Perspective of CPTPP

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Abstract: In the rapid development of digital trade, the digital trade dispute settlement mechanism also needs to be updated and adapted accordingly, thus promoting China's discursive and equal participation in world digital trade. The volume of digital trade in China is growing rapidly, yet the corresponding digital trade dispute settlement mechanism has not yet formed a sound system. This contradiction has become an urgent problem to be improved and solved in the field of digital trade in China. By comparing the digital trade dispute settlement provisions between China's FTA and CPTPP, this paper analyzes the deficiencies of China's relevant provisions in terms of openness, procedure, and efficiency. Most of these deficiencies originate from the lagging nature of China's digital trade provisions and the imperfection of procedures. Based on this, this paper provides suggestions respectively on the problems above. This includes making special provisions for dispute settlement in the field of digital trade, improving the provisions on suspension of concessions, and establishing rules ensuring transparency. Specifically, this put a high bar on the selection of panelists, the public enclosure of hearings and documents, and the application of the Third-Party participation principle.

Keywords: dispute settlement Mechanism, digital trade, regional trade agreement

1. Introduction

The rapid development of information science and technology in the 21st century has significantly changed the international trade model since digital technology has impacted the traditional trade model. To the current development trend, digital transactions and digital products are gradually becoming the new focus of trade. For all types of international trade, the perfection of the corresponding dispute settlement mechanism is the primary condition to maintain the stability and prosperity of the trade. China's digital trade volume is snowballing, yet the corresponding digital trade dispute settlement mechanism still needs to form a sound system. This contradiction has become a problem that needs to be improved and solved.[1] Therefore, China is in urgent need to build a new dispute settlement mechanism in the field of digital trade that is both discursive and practical and can be in line with the high-level international investment arbitration management mechanism. Building a new mechanism will encourage China to protect its interests while achieving close communication with other countries in digital trade and participating in the international digital trade competition.

In the new trade normal adapted to digital technology, the Internet becomes the primary medium of exchange, data flow as a means of transmission, and electronic payment becomes the dominant

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mode of settlement.[2] To cope with the new trade means, media, and developing connotation and extension, the trade dispute settlement mechanism needs to be expanded and classified accordingly.[3] There is a severe asymmetry between the successful development of digital trade in China and the lack of corresponding international rules. China's e-commerce-related laws and regulations or policy measures are not yet perfect, and not yet in line with the CPTPP provisions, so if the relevant provisions are allowed to apply to the CPTPP dispute settlement mechanism, China may face litigation pressure.[4]

2. The Current Situation and Deficiencies of China's Existing International Digital Trade Dispute Settlement Mechanism

The number of FTAs that China is currently involved in varies widely in terms of the signing time, and their provisions for digital trade dispute settlement mechanisms also vary due to the trade pattern at the time of laying down. There are essential differences in the transaction characteristics between digital trade and traditional commodity trade. The spatial and temporal attributes of traditional commodity trade are broken, trade barriers such as tariffs face new challenges, and the trade operation methods and corresponding regulatory systems call for adaptation. Whereas, taking China's oldest existing FTA, the 2002 China-ASEAN Framework Agreement on Comprehensive Economic Cooperation, as an example, although amendments later upgraded the agreement to the revised protocol, its digital dispute settlement mechanism section still basically follows the 2002 provision. However, the context in which the agreement was signed differs from todays, so some parts of the agreement need to be updated, especially digital trade, which has been developing rapidly in the last decade.

The problems of the China-ASEAN Investment Agreement cannot be generalized to represent all the FTAs that China participates in. However, it still shows that China's current digital trade dispute settlement mechanism must be fixed, systematically adapted and adjusted. The following section will analyze some of the main problems of China's existing digital trade dispute settlement mechanism.

2.1. Lack of Dispute Settlement Mechanisms for the E-commerce Sector

China's existing RTAs for finance and telecommunications chapters are mainly supplemented by amendments to the dispute settlement mechanism to make them more in line with the actual situation in these specialized areas. However, more precise and stable legislation is still needed.

More often than not, trade disputes in e-commerce generally apply the universal dispute settlement mechanism as part of the trade in services, without supplementing or amending the mechanism to address the characteristic and demand differences of digital trade and traditional trade in goods. FTAs that have adopted this approach include the China-New Zealand FTA, the China-Singapore FTA, and the China-Chile FTA. Although maintaining a certain degree of consistency with the traditional dispute settlement mechanism is conducive to the rapid implementation of the new stipulation and the stability and authority of the existing system, it also brings unignorable problems. The first one is that many countries are now stimulating digital trade to promote economic development and accelerate economic transformation, which will deepen the gray area of trade in services between digital trade/digital products and traditional services trade.[5] Therefore, sweepingly categorizing them may lead to more significant problems in the future. Another problem is that digital trade poses new adaptive requirements for dispute settlement mechanisms, and the adaptability of traditional trade dispute settlement mechanisms cannot meet the needs of this new form. Digital trade is an emerging and developing field, and its connotation and extension are still developing and expanding. The transaction methods it adopts are still innovating, relying on new industries and platforms to generate new legal relationships. Therefore, the dispute settlement mechanism in this field also needs

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to adapt to its changeability and can be self-adjust. Finally, there is an essential opposition between the physical nature of traditional trade and the abstract nature of digital trade, between the "localization of rules" in the traditional trade dispute settlement mechanism and the "border lessness of trade" in digital trade.[3]

In addition, some FTAs exclude e-commerce from the universal dispute settlement mechanism. For example, the China-Australia FTA explicitly rejects the application of the FTA's dispute settlement mechanism in e-commerce.

2.2. Compensation and Suspension of Benefits

There are differences in the provisions on compensation and suspension of benefits among China's respective trade agreements. Some of the agreements represented by China-ASEAN and China-Singapore only briefly provide for the prepositive negotiation process and the level of reasonable suspension of benefits. Meanwhile, some of the agreements, such as China-Australia and China-Korea, add to this the right of the respondent Party to request the original tribunal/panel to review the suspension of concessions, and the post-suspension procedure. At the same time, the agreements also differ in the acceptable level of suspension of benefits, either requiring the same level of loss or diminution of benefits or limiting it to the extent that the claimant received benefits through the agreement. Therefore, the systemic and complete provisions of our respective trade agreements for compensation and suspension of benefits are lacking, while the corresponding remedies are not provided, thus lacking a response to the various problems that may exist in cases in practice.

2.3. Insufficient Transparency

In the large international RTAs represented by CPTPP, fulfilling transparency obligations becomes one of the necessary conditions for realizing the basic principles of international trade, such as liberalized trade and fair competition, by enhancing the predictability of trade rules. In China’s dispute settlement mechanism, in contrast, transparency requirements are less defined and more lenient.

The lack of transparency of the rules is manifested first in the selection of the panel/tribunal members. Firstly, for the two members designated by the Contracting Parties separately, China’s FTA provides the right that if a contracting Party fails to designate within a specified period, the other contracting Party shall designate for it. Secondly, if the Contracting Parties cannot agree on the choice of the third member of the panel/arbitration tribunal within a specific period, the Director-General or Deputy Director-General of the WTO of a non-Contracting Party shall designate it. Thirdly, some agreements impose higher requirements on the panel chairperson. For instance, that he or she should not be a national of either Party, not be habitually resident in the territory of either Party, not be employed by either Party and not have dealt with the matter in dispute in any capacity.[6]

In brief, the provisions for the selection of panel or arbitral tribunal members in China’s trade agreements have fewer links, and less demanding in terms of balancing the interests of the Contracting Parties than the CPTPP, but more sensitive to the possible links between the panel/arbitral tribunal chair and the Contracting Parties. Therefore, there is a view that in China’s dispute settlement procedures, the power of the panel is large and centralized, and the whole process lacks transparency, which will easily lead to confusion and even challenges to the decisions of the panel by the Parties to the dispute.[7]

The insufficiency of transparency also finds expression in the public disclosure of the hearings and written text. China attaches importance to the principle of confidentiality in the dispute settlement mechanism. By the provisions of the respective FTAs, the tribunal deliberations and panel discussions are denied to the public, and only members of the tribunal/panel are allowed to participate. Both the

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tribunal and the other disputing Party are obliged to keep the documents submitted confidential, and only some agreements provide that if the other disputing Party requests, this Party shall provide a non-confidential summary that can be made public. In addition, China's FTAs do not require public hearings and stipulate a record of deliberations and the Parties' statements should be subject to the principle of confidentiality. This requirement protects the independence of arbitration from distracting factors such as public opinion, but it also limits public scrutiny of dispute settlement mechanisms.

2.4. Status and Shortcomings of the Principle of Third-Party Participation

First of all, the FTAs that China participates in are mainly bilateral FTAs, which are linear relationships between investors from one country and the other country or the other investor, so most of them do not have the issue of Third-Party participation of interest. However, it is still significative to compare the few existing multinational FTAs with CPTPP and analyze their gains and losses. The following is an example analysis of the China-ASEAN Framework Agreement on Comprehensive Economic Cooperation.

Firstly, the definition of "Third Party" in the China-ASEAN Agreement is roughly the same as that of the CPTPP, which requires them to be Parties with "substantial interests". This paper argues that there is a strong need for a qualification restriction of Third Parties. Leaving aside the specific role played by Third Parties in the dispute settlement process, the excessive involvement of countries/customs zones with too little interest should be avoided only in terms of the efficiency of the process. Along with the rapid development of digital trade volume, there must be an increase in the frequency of trade disputes. Since digital trade has significantly higher requirements for transaction timeliness, the FTA dispute settlement mechanism should balance transparency and efficiency to avoid the accumulation of cases due to judicial inefficiency. Further, avoiding the participation of non-interested Parties in trade disputes is an essential requirement for judicial fairness. The first reason is that the dispute settlement mechanism reconciles the rights and obligations between the Parties and theoretically should not concern the interests of Third Parties unrelated to the case. The second concern is that Third Parties involved in the dispute settlement process of other countries/others often have political purposes. However, the inclusion of political considerations in the scope of legal judgments is not in itself a proper consideration in an FTA that is concerned with the economic order. Lastly, if there are too many countries/customs zones involved in a case, the political factors behind the case are so intertwined that too many distracting factors may have an impact on the appellate judges' decisions, which may weaken the impartiality of justice and undermine the stability and predictability of the dispute settlement mechanism. Nevertheless, both China-ASEAN Agreement and the CPTPP lack specific reference standards for Third-Party materiality restrictions. As mentioned above, the agreements require that the Third Party has a "substantial interest" in the case, but in the absence of a fixed standard, the existence of a substantial interest itself is left to the subjective interpretation of the Third Party. Moreover, neither agreement stipulates whether an assessment of the presence of a "substantial interest" is required and, if so, by whom. Such shortcomings make the substantive limitation on Third Parties largely vague, which may lead to abuse of the Third-Party participation principle.

Secondly, compared to the CPTPP, which only vaguely provides for the right of Third Parties to express their views on dispute settlement, the China-ASEAN Agreement additionally provides for the rights that Third Parties should enjoy on this basis. In other words, the obligations of the panel to Interested Third Parties are specified. The China-ASEAN Agreement effectively protects the Third Party's participation and influence in the dispute settlement process by forcing the adoption of the Third Party's statement, copying the Third Party's statement to the arbitral tribunal, and giving the

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Third Party the right to influence the arbitration process. But at the same time, the protection of Third-Party rights may aggravate the abuse of the Third Party participation principle mentioned above.

3. Insights from Relevant Digital Trade Dispute Settlement Mechanisms in CPTPP

3.1. Application of Universal Settlement Mechanisms

Except for Vietnam and Malaysia, the CPTPP dispute settlement mechanism can be applied to all disputes arising in the area of digital trade, including issues excluded by the dispute settlement mechanism of DEPA.[8] Thus, the CPTPP dispute settlement mechanism is very comprehensive in its coverage of the digital trade area.

However, the CPTPP incorporates digital trade disputes within a universal dispute settlement mechanism and does not develop a separate, targeted dispute settlement mechanism for the e-commerce chapter. By contrast, the RCEP rejects the ex-officio application of the e-commerce chapter to the standard dispute settlement mechanisms in the agreement and instead promotes good faith consultations and treats consultations as a pre-litigation procedure for subsequent dispute settlement mechanisms. If consultations fail to resolve differences, the Parties may refer the matter to the RCEP Joint Committee but still cannot resort to the general mechanisms of the dispute settlement chapter, except where the Parties agree to apply them after consideration.[9] It can be seen that the dispute settlement mechanism of RCEP for e-commerce is more lenient than that of CPTPP, with fewer mandatory rules, and advocates more timely and bona fide consultations, showing the inclination and cares for this unique area. At the same time, it reflects the recognition of a large number of disputes and the high-efficiency requirements in the field of e-commerce. Therefore, this paper argues that while the CPTPP has played an innovative and catalytic role in other provisions in the field of digital trade, it has not yet completed a complete response to the special needs of this field in the sub-issue of dispute settlement.

3.2. Compensation and Suspension of Concession Mechanism is Relatively Well Developed

The CPTPP has a complete system of provisions for compensation and suspension of concessions and is innovative in its approach to monetary compensation relief. First-ly, the CPTPP strengthens the panel's role in the initiation and enforcement procedures of the suspension of concessions. As a precondition, before the initiation of the suspension of concessions procedure, the panel shall determine whether the responding Party has caused a non-conforming performance, loss, or diminution of benefit to the prosecuting Party and assess its importance to the prosecuting Party. As a procedural condition, the panel may modify the determination of the level of obligation if the Parties to the dispute cannot agree on the benefit of the suspension of concessions. Thus, the panel is in a critical position to judge and determine the level of the benefit of suspension of concessions. At the same time, the prosecution, as the initiator of the suspension of benefits procedure and the initial determiner of the suspended benefits, is also in an active and advantageous position for initiating and implementing the procedure. It is difficult to define what the "benefit of equal effect" is in reality due to the vagueness of its definition, so its initial determination is the reflection of the prosecution’s unilateral will. Whereas, the respondent has, at most, the right of defense but not the right of decision in the above procedures. Moreover, the essence of the suspension and concession procedure is to impose punitive restrictions on the respondent in the case of non-performance of obligations, so the respondent is often in a passive position. At this time, by improving the panel's role, the legislator can check and balance each other and then effectively limit the rights of the prosecution, prevent the abuse of the suspension and concession procedure, and protect the reasonable interests of the respondent.

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Secondly, the CPTPP's inclusion of economic factors and consequences in determining suspension benefits reflects the CPTPP's priority for trade flows as an RTA relative to other aspects such as politics.[10]

Finally, the CPTPP adds a remedy of monetary compensation. This remedy adds to the rights of the responding Party in the suspension and concession procedure and alleviates the unequal status of the Disputing Parties in this procedure. Moreover, once implemented, the suspension of concessions will rapidly affect the trade flow due to the timeliness of digital trade transactions and the requirement of timeliness. Therefore, the provision compensation mechanism has a preventive effect on the significantly negative impact of the suspension of concessions on digital trade between the two Parties. However, at the same time, the purpose of the suspension and concession procedure should be to prompt the respondent to perform the recommendations given by the arbitral tribunal or the panel of experts promptly. The excessive pursuit of the relative equality of the rights of the prosecution and the respondent may contradict the original purpose of the suspension and concession procedure and reduce its binding effect on the respondent. Therefore, balancing the protection of the respondent's interests and the effectiveness of the suspension and concession procedure should be an important issue that requires shared attention in agreement formulation and practical work.

3.3. High Demand for Openness and Transparency

The CPTPP's regulations on selecting expert group members are more elaborate, complete, and stringent than those of China's other respective trade agreements. Firstly, not only does CPTPP not accept the prosecution's untimely appointment of panelists, but it also imposes strict limitations on the scope of panelists chosen by the prosecution for the respondent. Secondly, for the third member to serve as the panel chair, unlike the manner of designation by WTO officers under China's respective trade agreements, the CPTPP has a different prescription. If the Disputing Parties cannot agree on the panel chair, the two selected panelists will choose the chair from the panel chair roster by consensus or random selection, and may also entrust the appointment to an independent Third Party. In summary, the CPTPP imposes stricter restrictions on the prosecuting Party in the process of panelists designation. It excludes WTO’s influence in the designation of panel chairs and increases the optional route of designation, and also provides for the roster of panelists or chairs.

Limiting the prosecuting Party should be aimed at reducing the number of arbitration cases. As the Party that begins the appellate aspect of the dispute, the prosecuting Party should consider that there are conflicts in the case that cannot be reconciled through consultation. Referring to the CPTPP's emphasis on the efficiency of the dispute settlement system, the agreement reduces the abuse of the appeal mechanism by imposing strict requirements on the prosecuting Party when the case unnecessarily enters the subsequent rigorous appeal process. At the same time, such restrictions echo the detailed, demanding, and time-consuming features of the subsequent appeals mechanism. That is to say, raising the threshold for entering the appellate process and declining cases entering the appellate stage allows the appellate mechanism to ensure the fairness and stability of the judgment through strict multiple processes.

For the designation of panel chairs, the CPTPP's provisions exclude the role of the WTO (Deputy) Director General in cases and instead resort to independent designation on a case-by-case basis, which better reflects the flexibility and fairness of the mechanism. In addition, the CPTPP relies, to a greater extent, on the roster of panel chairs. This mechanism limits the scope of the prosecution's right to choose the panel chair on its behalf, effectively balancing fairness and efficiency.

The CPTPP requires highly on public disclosure of hearings and related documents. The CPTPP made a disruptive innovation to its predecessor FTAs regarding the transparency requirements of the dispute settlement mechanism. The CPTPP pro-vides in its rules of procedure for panels that not only should panel hearings be open to the public but that each disputing Party should also make its

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statements and writ-ten responses to panel questions or requests available to the public.[11] This is a radical change of the DSU's provisions on the confidentiality of statements. The public's right of access to dispute information is no longer restricted by the Disputing Parties' will, and disclosure of dispute information to the public becomes an obligation of the members.[12] This provision encourages public participation in international dispute settlement.

This significant change should represent a new understanding by the CPTPP's framers of the trade-offs between the benefits and drawbacks of public scrutiny on arbitration outcomes. That is to say, the positive impact of public scrutiny on the fairness of arbitration outweighs the negative impact of public opinion on the independence of arbitration. Stricter procedures for monitoring the enforcement of awards enhance the procedural fairness of dispute settlement. It promotes its trans-formation from a "power-oriented" to a "rule-oriented" system, thereby establishing an international dispute settlement mechanism that serves the interests of the majority of states.

3.4. Status and Shortcomings of the Principle of Third-Party Participation

The CPTPP provides in its Dispute Settlement chapter that a Party that is not a consulting Party and believes it has a substantial interest in the matter may participate in the consultations by giving written notice to the other Parties. The Party shall include a statement of its substantial interest in the matter in its notification. The Interested Third Party shall be entitled to attend all hearings, submit written statements, present its views orally to the panel, and receive written statements from the Parties to the dispute after delivery of the written notice to the Parties.[11]

Firstly, from the provisions, unlike the China-ASEAN Framework Agreement on Comprehensive Economic Cooperation, which only provides for the participation of Third Parties in the tribunal session, the CPTPP provides for the participation of Interested Third Parties in dispute settlement at both the consultation and panel stages. This provision increases the possibility of Third-Party participation in different stages of dispute settlement, reflecting the CPTPP's concern for the importance of consultation as a preliminary procedure and highlighting the efficiency advantage of consultation. The CPTPP's dispute settlement chapter reflects the high pursuit of efficiency throughout the text, including the provision of "first-instance arbitration" and the emphasis on consultation. The CPTPP's emphasis on efficiency is particularly favorable for digital trade due to its higher requirements for timeliness.

Secondly, the CPTPP also imposes restrictions on the "Third Parties" that may participate in the dispute settlement process in an independent capacity. The first is that the Third Party is required to be a "Party", as defined in Article I of the CPTPP, i.e., a country other than the negotiating Party, a country within the contract, or a separate customs territory. The second is the requirement that the Third Party involved in the consultations has a "substantial interest" in the subject matter of the dispute. The requirement that the Third Party involved in the panel opinion has an "interest" in the subject matter of the dispute.

Significantly different from the China-ASEAN agreement, the CPTPP limits the substance of Third Parties participating in expert group opinions to "having an 'interest'" rather than "having a 'substantial interest '". The purpose of this provision, which differs from that of Third Parties participating in consultations, should be to broaden the scope of Third Parties participating in expert group sessions. However, due to the lack of a clear interpretation of "substantial interest" itself, this paper believes that the extent to which this purpose has been achieved in actual cases is doubtful.

Finally, the CPTPP places restrictions on the rights that Third Parties have in participating in the dispute settlement process. However, the CPTPP does not specify the exact size of the specific role of Interested Third Parties and its influence on the dispute settlement. That is to say, the extent to which the opinions of Third Parties are adopted and credited when they participate in consultation is not limited, which should fall within the scope of discretion. An extensive scope of discretion may

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result in failing to guarantee the Third Party's influence on the case. Therefore, it places a higher demand on judges to exercise their rights carefully. At the same time, the shortcomings of the substantive limitations mentioned above should have a lesser impact on their outcome because of the limitations on the rights of Third Parties, while they may still hurt substantive cases.

4. Improvement of the Dispute Settlement Mechanism of China's Digital Trade Rules

4.1. Building a Systematic and Targeted Digital Trade Dispute Settlement Mechanism

A comprehensive look at the FTAs in which China participates indicates a general lack of clear and stable, targeted dispute trade legislation for digital trade. Therefore, the first task for China is to establish a complete dispute settlement mechanism with universal coverage for the whole field of digital trade. In addition, the existing mechanism should be standardized and updated within the field of digital trade so that it can be adapted to the new form, stage, and situation of the present time. At the same time, legislators can refer to the separate legislation the Environment Chapter of CPTPP, formulating an independent dispute settlement mechanism for electronic commerce, to provide special care for the specialness of this field. In the practical application, apply special procedure preferentially.

4.2. Improving the Operational Efficiency of Dispute Settlement Mechanisms

Digital trade has strict requirements for quick turnaround of trade, so the trade dispute settlement mechanism should be fully efficient in operation while ensuring fairness and predictability. Firstly, China should refine the procedural design, and avoid extra disputes caused by the lack of regulations or unclear regulations. On this basis, China should also consider the procedural system construction, reasonably set the procedures and their requirements, and accelerate the mechanism's operation. In addition, China should advocate consultation and strengthen consultation procedures. Since the panel/arbitration tribunal process requires a strict process to ensure impartiality and independence, it is inevitably less efficient and more costly. Therefore, digital trade should complete dispute settlement before entering the appeal process as far as possible. More specifically, leading or supporting provisions can be set at each stage. For example, allowing the prosecution to suspend the appeal at any time and initiate good offices, conciliation, and mediation procedures throughout the dispute settlement process. Also, adding provisions for Third-Party participation in the consultation stage to benchmark the appeal stage will find similar effect.

4.3. Improve the Suspension of the Concession Mechanism

There is a notable gap between China's suspension and concession mechanism and the CPTPP in terms of the completeness of the system, the degree of detail of the provisions, and the relief measures. For the reasons above, the suspension and concession mechanism must be systematically constructed, and detailed procedures must be designed. CPTPP has very detailed provisions on the suspension and concession system mechanism, which can represent the highest level of legislation on this mechanism in the current trade agreements. Hence, China can take the system in CPTPP as a model for formulating and modifying other FTAs.

In addition, it is still controversial whether to add a relief system to the suspension and concession system. This issue needs to be considered combining with specific trade areas and their unique market situations and specific characteristics of the Parties, balancing the protection of the respondent's interests and the actual effectiveness of the procedure. In addition, legislators also need to consider the adaptability of the mechanism to future changes and whether the system can maintain its stability in the long-term development from a rule-oriented perspective. In this regard, rules in CPTPP are still

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valuable in improving the previous dispute settlement mechanism issues and promoting the revision and establishment of our FTA dispute settlement mechanism.

4.4. Weighing Interests Concerning the CPTPP on the Issue of Openness and Transparency

As for the selection of panel/arbitration tribunal members, this paper believes that the interference of WTO officers should be excluded as far as possible. Referring to the provision of CPTPP, the principle of independent appointment on a case-by-case basis should be adopted, and the panel/arbitration tribunal roster should be introduced. For one thing, WTO officers usually have limited knowledge of each case and could fail to recognize the critical factor on designating the panel/tribunal chair, given the sophisticated conflicts of interest involved. For another, a random selection from the Roster of Panel Chairs, backed by a defined process and randomness, is less likely to generate challenges to the outcome between the Dispute Parties. Finally, the above mechanism also facilitates the efficiency of the appeal process. However, such a mechanism imposes high requirements on the appointment of the Roster of Panel Chairs regarding qualification and background checks, so there's still a long way to go.

The public disclosure of documents and hearings requires a balance between "im-partial supervision" and "protection of independence". On this issue, China can refer to the CPTPP's idea of trade-offs and modifications and evaluate the pros and cons of the two mechanisms with the primary objective of safeguarding the interests of all Parties equally and the requirement of protecting procedural propriety.

For the Third-Party participation rule, first of all, in terms of purpose and effect, this rule effectively protects the fairness of arbitration and the interests of other Parties through the participation and supervision of Interested Third Parties, so the advantages outweigh the disadvantages. However, both China-ASEAN Agreement and CPTPP are still incomplete.

In Third-Party participation, the core issue is balancing the "prevention of abuse of Third-Party Participation Rules" and the "protection of Third-Party rights". The suggestion given by this paper is to clarify the unclear definition and criteria relevant to the Third-Party Principle. To begin with, interpretation of the "substantial interest" of the Third Party is needed to prevent the abuse of the Third-Party participation rules. Considering the abstraction and indefinability of the criterion of "substantial", the assessment and judgment is apt to fall into the arbitrary discretion of the arbitral tribunal/panel. This paper reckons that, in practice, the Agreement can provide standardized cases for the arbitral tribunal/panel to judge whether the "substantial interest" is satisfied by comparing with the standard cases. Also, to protect the right of the Interested Third Party, the accompanying responsibilities of the panel should be set, referring to the provisions of the China-ASEAN Agreement. By limiting both the rights and obligations of the Interested Third Party, the interests of both sides of the dispute can be protected from infringement, and judicial impartiality and independence can be pursued on this basis.

Furthermore, the CPTPP should unify the different standards on the substantive interests of Third Parties participating in consultations and panels. Since the consultation mechanism is encouraged and stressed, the opportunities for Third Parties to participate in the consultation process should be protected simultaneously. The rights of Third Parties in the consultation procedure could be regulated separately but should not deny the protection of the rights of Third Parties to participate in both stages.

5. Conclusion

The trade dispute settlement's core aim is to protect both Parties' interests and facilitate trade exchanges. Specifically, digital trade requires the pursuit of efficiency based on ensuring fairness and

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stability. Therefore, digital commerce has put forward special requirements for the dispute settlement mechanism.

This paper analyzes the gains and losses of China's FTA compared to CPTPP. Accordingly, it proposes suggestions for improvement for relevant articles on China's FTA in response to these requirements. The first requirement is to be fairness-orientated. As the most basic and core requirement of the dispute settlement mechanism, this paper expects to strengthen the supervision of the dispute settlement process regarding the selection of tribunal/panel members and the principle of Third-Party participation. The second requirement is to be procedural orientated. Adaptable, reasonable, and transparent procedures are the basis for any mechanism to operate stably in the long run. This paper hopes that China's FTA dispute settlement mechanism can make adaptive and targeted rule adjustments to digital trade and improve the procedural system, such as Suspension and Concession Rules and Third-Party participation principles. The third suggestion is to be efficiency oriented. Therefore, this paper hopes to reduce costs and improve efficiency by refining procedures and encouraging consultation. The last one is to be purpose-orientated. When specifying specific procedures, the original purpose of certain rules and the interest to be protected are most important. For example, the laws of suspension and concession aim to induce the respondent to act under the recommendation of the arbitral tribunal, so the respondent's rights should not be excessively enhanced in the balance of interests of both sides of the dispute.

The digital transformation of trade links and the rapid increase in the share of digital trade in global trade make it necessary and urgent for China to improve the existing digital trade dispute settlement mechanism. Establishing a new dispute settlement mechanism that aligns with the advanced international mechanisms can facilitate China's participation in advanced digital trade rulemaking. This helps improve China's discourse in international trade, protect China's interests in trade exchanges, and promote China's active involvement in international digital trade competition. Through this paper, the author hopes to take the essence of the CPTPP by analyzing and drawing on its system logic and ideas of modifications to previous agreements to assist and guide the formulation and amendment of China's FTA.

There are still some things that could be improved in this paper, which expects to be supplemented and enriched by subsequent studies. For one thing, the digital trade dispute settlement mechanism still requires more extensive analysis to cover each specific regulation. In addition, the core of establishing a sound trade dispute settlement mechanism lies in balancing the interests of all Parties and the requirements of various principles. Subsequent studies can connect further with practical reality and make more empirical suggestions for the improvement of dispute settlement mechanisms.

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