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## Chapter 1 Introduction

Free Trade Agreements (FTAs) have become “an indelible feature of the international trading landscape”.<sup>1</sup> After the failure of Cancun Ministerial Meeting of WTO and prolonged negotiation on Doha Development Agenda (DDA), many trading nations engaged in negotiations of FTAs including China and India. The torpedo of Trade Facilitation Agreement reached in Bali in 2013 may push this trend even further.

There is no doubt that the commitments made in the FTAs are, in some cases, more than what WTO can offer. However, the benefits of an FTA such as free flow of goods, services, investments, technology, capital which can be beneficial for the development, stability, and growth of the countries as well as the region can only be locked in by adopting a “dispute settlement system with fair and efficient procedures and practices”.<sup>2</sup> This is because “dispute settlement mechanisms provide a means to enforce the commitments made in international trade agreements”.<sup>3</sup> Moreover, an “inefficient dispute settlement mechanisms, can be an effective non-tariff trade barrier, therefore, it might be accurate to say that dispute settlement mechanisms which are inefficient and ineffective actually block trade”.<sup>4</sup> It is also argued that “if the commitments cannot be enforced, international trade agreements would be expected to breakdown or would not have concluded in the first place”.<sup>5</sup> An FTA, in addition to bringing about liberalisation of the economy and reducing tariffs, should also contain comprehensive rules on dispute settlement, which are practical, efficient and effective.<sup>6</sup> Dispute settlement mechanism serves as the enforcement mechanism to enforce the commitment made by parties in their FTAs. Such enforcement mechanism through dispute settlement mechanism reflects enforcement capacity and enforceability. Enforcement capacity is the “ability to reciprocate credibly against a violation of the terms of the international trade agreement”.<sup>7</sup> Enforceability “includes

<sup>1</sup> Claude Chase; Alan Yanovic; Jo-An Crawford; Pamela Ugaz, “Mapping of Dispute Settlement Mechanisms in Regional trade Agreements: Innovative or Variations on the a Theme?”, *WTO Staff Working paper*, No. ERSD-2014-07.

<sup>2</sup> Asian Development Bank, *How to Design, Negotiate and Implement a Free Trade Agreement in Asia*, Asian Development Bank, Metro Manila, Philippines, 2008.

<sup>3</sup> Claude Chase; Alan Yanovic; Jo-An Crawford; Pamela Ugaz, “Mapping of Dispute Settlement Mechanisms in Regional trade Agreements: Innovative or Variations on the a Theme?”, *WTO Staff Working paper*, No. ERSD-2014-07.

<sup>4</sup> Jack R. Miller, “ADR in International Disputes”, Paper presented at The North American Conference on Peacemaking and Conflict Resolution, Montreal, Canada, 4 March 1989.

<sup>5</sup> Claude Chase; Alan Yanovic; Jo-An Crawford; Pamela Ugaz, “Mapping of Dispute Settlement Mechanisms in Regional trade Agreements: Innovative or Variations on the a Theme?”, *WTO Staff Working paper*, No. ERSD-2014-07.

<sup>6</sup> Virachai Palasai, “Coordinating Trade Litigation”, ICTSD Background Paper No.4, May 2012.

<sup>7</sup> Claude Chase; Alan Yanovic; Jo-An Crawford; Pamela Ugaz, “Mapping of Dispute Settlement Mechanisms in Regional trade Agreements: Innovative or Variations on the a Theme?”, *WTO Staff Working paper*, No. ERSD-2014-07. Also see WTO Secretariat, “World Trade Report 2007: Six Decades of Multilateral Co-operation – What have We Learned?”, WTO, 2007.