



COMMENTS FOR  
SESSION 3 “GLOBAL TRADE SYSTEM”  
—FROM THE VIEW OF DISPUTE SETTLEMENT—

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# 1. EFFECTIVE ENFORCEMENT OF TPP AND DISPUTE SETTLEMENT MECHANISM (DSM)

- Rare recourses to DSM in FTAs
  - ✓ ADR and/or consultation-oriented attitude
  - ✓ Preference for effective WTO DSM
- TPP could be an exception >>> Effective DSM is essential
  - ✓ Much broader coverage than that of WTO (ex. e-commerce, SOEs, environment, labor)
  - ✓ Mega FTA among Members with vast trade volume, including U.S. and Japan >>> more cases expected

- Is TPP DSM effective? >>> Maybe yes, but some caveats remain...
  - ✓ Obscurity in parties' discretion in panel composition (Art.28.9.2)
  - ✓ Weakened binding effect of panel report? >>> elimination of violation is required "whenever possible" (Art.28.19.2)
  - ✓ Need for institutional support (secretariat, legal counsels)

## 2. WTO DSM AND FUNCTIONING TPP

- TPP partly incorporates WTO rules >>> Effective implementation of TPP presupposes proper function of WTO DSM
  - ✓ ex. Arts.2.3 (national treatment), 8.4 (TBT), 29.1 (general exceptions))
  - ✓ TPP panel must refer WTO precedents (Art.28.12.3)
- Superb performance of WTO DSM >>> 507 cases since its establishment in 1995 as of July 7, 2016

- But... institutional fatigues have been observable recently
  - ✓ Material delay in Appellate Body proceedings >>> 90-day deadline for final report has been often missed in recent cases
  - ✓ Fuss over reelection of Prof. Seung Wha Chang (Korea) >>> could it be serious breakdown of DSM?!, at least “re”politicization of depoliticized WTO dispute

# 3. FUTURE OF DSM IN INTERNATIONAL TRADE

- TPP DSM could be the first active one of FTA, while WTO still will play a central role as ever for its abundant experience and effectiveness
- Important to revitalize WTO rulemaking, covering post-Doha new agendas >>> plateau in rulemaking discredits WTO as a whole, and does harm to DSM