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ASEAN Countries Position as a Third Party in WTO Dispute Settlement Mechanism

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Abstract

ASEAN's active participation as a third party in the World Trade Organization (WTO) Dispute Settlement Mechanism (DSM) preserves its economic interests while strengthening regional cohesion and cooperation. However, challenges such as limited resources, diverse national interests, and lack of legal competence remain. This paper examines the benefit and challenges of ASEAN's participation as third parties in the WTO through qualitative document analysis and critical case studies. It underscores the need for third-party involvement in enhancing WTO DSM, boosting transparency, and contemplating broader global trade effects. The study proposes capacity-building efforts, improved intra-ASEAN cooperation, and partnerships with other WTO members and international organizations. As ASEAN's economic integration and global trade, activity grows, so will its role in the WTO DSM, underlining the importance of strategic and collaborative engagement in international trade law and policy.

Keywords: ASEAN, WTO, Dispute Settlement Mechanism, Economy, Trade.

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1. Introduction

ASEAN is a regional intergovernmental organization between ten Southeast Asian countries: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam (Leong,1998). The ASEAN Declaration, signed on August 8, 1967, in Bangkok, Thailand, established the organization's primary goals of promoting political and economic cooperation and regional stability among its member countries (ASEAN,2024). ASEAN's goals include accelerating regional economic growth, social progress, and cultural development while promoting regional peace and stability through respect for justice and the rule of law in relationships among member countries.

The World Trade Organisation (WTO) is an international organization that regulates trade among member countries to ensure that it runs as smoothly, predictably, and freely as possible. One of the WTO's primary functions is to provide a forum for member states to resolve trade disputes through its dispute settlement mechanism (WTO,2024). The dispute settlement mechanism is a structured process that includes consultations, panels, an appellate body, and arbitration. This mechanism ensures the resolution of trade conflicts fairly, quickly, and efficiently, bringing stability and predictability to the global trading environment. The dispute resolution process usually starts with consultations between the disputing parties. If these consultations do not resolve the issue, a panel of experts is formed to investigate the case and render a decision. Parties may appeal the panel's decision to the Appellate Body, which will review the case and issue a final ruling. The ruling enforcement is monitored, and if a country fails to comply, retaliatory measures may be imposed.

Third-party involvement in WTO disputes is critical to the multilateral trading system's functioning. Third parties, usually other WTO members with a significant interest in the dispute, can offer additional perspectives and insights that would not be considered otherwise. Their participation can increase the transparency and comprehensiveness of the dispute resolution process, ensuring that the final rulings are well-rounded with broader implications for the global trading system (Kucik and Peritz,2021). Third parties may submit written briefs, participate in panel proceedings, and make oral statements to protect their interests, particularly if the outcome of the dispute affects them indirectly. Furthermore, third-party involvement enables

smaller countries, which may lack the resources or expertise to fully participate in disputes, to learn and gain experience in dispute settlement mechanism processes, thereby contributing to developing international trade law and strengthening the multilateral trading system (WTO,2024).

ASEAN countries have become increasingly involved as third parties in WTO disputes. Their involvement reflects their growing interest in global trade and their desire to protect and advance their economic interests within the framework of international trade law. By acting as third parties, ASEAN countries can influence the interpretation and application of WTO rules, ensuring that their trade policies and practices are fairly considered in dispute resolution. The participation of ASEAN countries in WTO disputes demonstrates their commitment to the rules-based multilateral trading system. As developing countries, ASEAN members frequently face significant global market challenges, such as trade barriers and unfair practices by larger economies. By participating in the dispute settlement mechanism as third parties, ASEAN countries can advocate for a fairer trading environment, support trade rule enforcement, and contribute to the evolution of a more equitable international trade system.

ASEAN's collective approach to the WTO dispute settlement mechanism reflects their regional solidarity and cooperative spirit. ASEAN countries can strengthen their position in global trade by presenting a united front. This collective action benefits individual member states while strengthening ASEAN's position as a key player in international trade negotiations and dispute resolution. Hence, ASEAN countries' position as third parties in the WTO dispute settlement mechanism demonstrates their proactive approach to protecting their trade interests and promoting a fair and just global trading system. Their participation enhances the dispute resolution process, aids in developing international trade law, and emphasizes the importance of a rules-based multilateral trading system. As ASEAN economic integration and global trade deepen, its role in the WTO dispute settlement mechanism is likely to grow even more significant.

2. Methodology

This study primarily employs a qualitative research approach (Hassan and et al,2022; Khalid and et al,2020). A qualitative approach is a proper approach in this type of study as it investigates the role of ASEAN countries as third parties in the WTO DSM. The process is intended to gain detailed insights and comprehend the complexities of their involvement. The data are collected

from primary and secondary sources gathered through library-based research to ensure a thorough understanding of the topic (Althabhawi and et al,2023; Azmi and et al,2023; Dazulhisham and et al,2023). This paper tracked the primary and secondary resources from journal archives and databases. Primary sources were prioritized over secondary, conceptual or theoretical, and untrustworthy sources. Typically, primary sources are articles published in respectable journals.

The next research method used in this article follows a descriptive-analytical approach grounded in document analysis (Ahmadian and Mohseni,2023). The document analysis entails a detailed examination of numerous resources relevant to the WTO DSM. Key sources include WTO Dispute Settlement Body (DSB) reports, panel and appellate body reports, and third-party contributions from ASEAN nations. These documents provide firsthand insight into ASEAN countries' participation and stances in various conflicts. Additionally, the analysis includes scholarly articles, books, and policy papers that analyze ASEAN's role in the WTO DSM. Official statements, press releases, and position papers from ASEAN members are also examined.

Database searches are also a type of secondary source. Relevant cases involving ASEAN countries as third parties are located in the WTO Dispute Settlement Database. This database identifies specific conflicts and determines the involvement of ASEAN members. Furthermore, legal resources such as LexisNexis are used to conduct thorough legal studies and commentary on these issues. These sources provide extensive interpretations and critiques of the legal arguments and decisions, improving our understanding of ASEAN's participation in the WTO DSM.

The next methodology is using a careful data analysis method (Adil Kashef Al-Ghetaa and et al,2023). The data analysis takes a methodical approach to interpreting and comprehending the acquired data. Given how easy it is for inexperienced researchers to identify and evaluate qualitative data, this data analysis method was selected (Naidu and et al,2024). A case study analysis is the data analysis method used in this article. Detailed case studies of selected WTO disputes w ith ASEAN nations as third parties are carried out. The strategy entails an in-depth investigation of specific conflicts to comprehend the contributions and arguments advanced by ASEAN members. The study's goal is to determine the amount of their effect on final verdicts by analyzing their submissions and the impact of their participation. This analytical

approach highlights the strategic objectives and reasons driving ASEAN's involvement in these disputes.

3. Result and Findings

3-1.ASEAN as a Trading Region

All ASEAN members are signatories to the ASEAN Free Trade Area (AFTA) agreement and various ASEAN economic integration initiatives. Hence, there has been significant increase of trade and businesses between member states. This facilitates free flow of skilled labor and investment in the automotive sector (Jamaluddin and et al,2023) flourishes the tourism industry (Khalid and et al,2013) and promotes renewable energy sector (Abd Aziz and et al,2024).

Be that as it may, there have been challenges in implementing some initiatives in the trade agreements due to legal complexities, geopolitical dynamics, and different national interests of each member states. Although ASEAN has an abundance natural resource to stimulate more trading and businesses in the region, conflict in shared water resources between neighboring countries have interferes with good political relationships and requires a more diplomatic approach between them, notably in the Mekong River basin (Rahman and Khalid,2013; Rozlinda and et al,2020; Khalid and et al,2020; Abdullah and et al,2024).

3-2.Overview of ASEAN's Involvement in the WTO

Since its establishment, on January 1, 1995, ASEAN has played a role in the WTO (Fredy and Ferga Aristama,2023). The WTO, a body focused on regulating trade relations among nations, acts as a platform for creating trade deals and resolving disputes. Each member state of ASEAN is a participant in the WTO's activities complying with its regulations and responsibilities (WTO,2024).

The involvement of ASEAN countries in the WTO is crucial for their development and integration. Through the WTO, these nations can confidently navigate trade, ensuring fairness and predictability in their import and export activities. Additionally, ASEAN members benefit from the WTO mechanism for resolving disputes, which aids in addressing trade conflicts, between participating countries.

3-3.ASEAN's Stance on Multilateralism and Dispute Resolution

ASEAN continually stands for an effective and equitable global economic system, emphasizing the importance of the WTO and its rules-based structure. This unwavering dedication to multilateralism is deeply rooted in ASEAN's

policies and activities, which not only promote regional cooperation and integration but also international trade on a larger scale.

At the heart of ASEAN's approach is a stable, predictable, and transparent international trading system critical to economic growth and development. This can be seen by ASEAN's steadfast support for the WTO DRM, which emphasizes a structured process to address and resolve trade problems. By advocating for a procedure that guarantees disputes are resolved impartially and in conformity with established norms and standards, ASEAN strengthens the global trading system's reputation and trustworthiness. This dedication to a rules-based approach promotes order and fairness and instills confidence in trading partners, allowing for smoother and more efficient international commercial interactions.

The emphasis on a rules-based international economic system is also visible in ASEAN's regional projects, particularly the ASEAN Economic Community (AEC). Its goal is to create a single market and production base, allowing member states to freely exchange goods, services, investments, skilled labor, and capital. This ambitious project aims to harmonize regional legislation and standards, lowering trade and investment obstacles and forming a more connected and competitive economic community. By linking its regional economic integration efforts with the WTO's multilateral framework, ASEAN commits to global trade principles and strengthens its members' collective bargaining power in international forums.

Furthermore, ASEAN's integration projects, such as the AEC, provide a solid platform for member nations to work together on economic policy, share best practices, and address common concerns. This collaborative strategy enhances the regional economy and fortifies ASEAN's role in the global economy. By establishing deeper economic linkages and creating a united market, ASEAN strengthens its members' ability to attract international investment, promote economic resilience, and drive sustainable development (ASEAN Economic Community - ASEAN Investment,2024).

ASEAN's strong support for a global economic system founded on the WTO's rules-based framework demonstrates its dedication to multilateralism, stability, and transparency. It emphasizes the significance of complying with international trade laws and regulations and establishes a more integrated regional economy. This combined emphasis on regional cooperation and global involvement guarantees that ASEAN remains a key player in

supporting equitable and sustainable economic growth in an increasingly linked world.

3-4.Previous Involvement of ASEAN Countries in WTO Disputes as third Parties

ASEAN member countries have a long history of active participation in WTO disputes, typically as third parties. In the context of WTO DSM, a third party is a member country that, while not directly involved in the dispute, has an important role in its conclusion and seeks to convey its position to the dispute settlement panel. This strategic involvement benefits ASEAN states by allowing them to articulate their trade objectives and gain influence over the interpretation and implementation of WTO regulations. Yvette Foo (2023) from the Centre for International Law stated that this type of participation allows ASEAN countries to be proactive in preserving their economic interests and creating a global trade environment.

ASEAN countries being involved as third parties in WTO disputes benefits ASEAN member states in particular. By participating in these processes, they can ensure that their perspectives are considered in resolving disputes that may have far-reaching consequences for the international trading system. This involvement is important for ASEAN’s smaller and developing countries as it provides a key forum to express their concerns and preserve their economic interests. In many cases, small countries may lack the leverage or capacity to act on important issues. However, by acting as third parties, they can contribute significantly to the conversation, fight for fair practices, and seek interpretations of trade regulations consistent with their developmental goals and economic realities. This engagement promotes a better awareness and familiarity with the WTO’s dispute resolution mechanisms among ASEAN members. It allows them to develop legal and technical skills, which are essential for negotiating the complexity of international trade law. This accumulated knowledge and experience not only improves their ability to handle future disputes more efficiently but also enables them to make a more meaningful contribution to developing global trade standards. ASEAN countries' collective presence as third parties strengthens their solidarity and increases their influence within the WTO framework. By taking a common stance on some problems, they can more effectively argue for changes or clarifications in trade regulations that benefit the entire region. This collaborative approach emphasizes the importance of regional collaboration in global trade regulation and ASEAN's commitment to a rules-based

international trading system.

The active participation of ASEAN member nations as third parties in WTO disputes demonstrates their commitment to defending and developing their trade interests. This involvement guarantees voices are heard in trade disputes and helps them better grasp the WTO's dispute settlement systems. Acting as third parties is a smart move for ASEAN's smaller and developing states, allowing them to protect their economic interests, advocate for fairer trade practices, and help shape international trade conventions. This collaborative endeavor demonstrates ASEAN's dedication to a stable, predictable, transparent global trading system.

3-5.Case studies: Example of ASEAN Countries acting as third Parties in WTO Disputes

The first case involves the United States' limitation on shrimp and shrimp products imports (WTO Dispute Settlement-DS58,2024). This case concerned a lawsuit by India, Malaysia, Pakistan, and Thailand against the United States prohibition of importing shrimp and its products that were not collected using turtle-excluder devices. The United States enforced this prohibition to preserve endangered sea turtles, stating that prawns collected without TEDs threatened their existence. Thailand and Malaysia, along with India and Pakistan, acted as third parties in this case. Their participation was critical, as they offered their viewpoints on the consequences of the United States embargo on their prawn exports. They maintained that the prohibition violates WTO regulations, notably those governing non-discrimination and trade restrictions. The WTO dispute settlement panel decided for the complainants, concluding that the US prohibition was discriminatory and breached WTO norms. This case demonstrated the need for a rules-based approach to commerce, and the need for environmental laws to be imposed without discrimination. ASEAN''s intervention in this dispute served to safeguard its trade interests while also contributing to a broader interpretation of WTO trade and environmental standards.

The second instance is the European Community measures affecting the approval and marketing of biotech products (WTO Dispute Settlement-DS291,2024). This lawsuit featured a dispute made by the United States, Canada, and Argentina against the European Communities (EC) over its biotech product approval and marketing regulations. The complainants claimed that the EC's approval procedures were too long and restrictive,

imposing an embargo on biotech goods. The Philippines, Thailand, and India are third parties in this dispute. They expressed their perspectives on biotech regulatory measures and their influence on agricultural exports. Their involvement highlighted the need to ensure that regulatory systems are clear, science-based, and do not impose unwarranted trade obstacles. The WTO panel determined that the EC's measures were incompatible with its duties under the WTO accords. The case emphasized the importance of clear, science-based regulatory frameworks for biotechnology goods, as well as the values of nondiscrimination and openness in international commerce. The engagement of ASEAN nations shaped the panel's knowledge of the issues and ensured that their interests were taken into account in the dispute settlement process.

The participation of ASEAN nations in the WTO DSM demonstrates their commitment to a multilateral, rules-based trade system. By actively engaging as third parties in different disputes, ASEAN nations guarantee that their trade interests are safeguarded and their views are heard in trade conflict settlement. This engagement not only aids in the fair and successful resolution of disputes but also shapes the interpretation and application of WTO rules, supporting a stable and predictable global trade environment.

The case studies of ASEAN nations engaging as third parties in WTO disputes demonstrate the relevance of their participation. These instances show how ASEAN nations may influence the outcome of the dispute and contribute to a more comprehensive interpretation of international trade regulations. As the global trading system evolves, ASEAN countries' active participation in the WTO DSM will remain critical to ensuring that their trade interests are protected and the ideals of fair and open trade are maintained.

4. Benefits of ASEAN Countries Participation as Third Parties

ASEAN is critical in creating regional dynamics and promoting collaboration among its member states. Parallel to the growth process, ASEAN has grown into a far more comprehensive organization, with the pursuit of regional peace and stability continuing to be its guiding principle (Abdul Muein Abadi,2015). One important component of ASEAN's engagement is its role as a third party in regional and international issues. By taking on this responsibility, ASEAN member states might enjoy a slew of benefits that go beyond the current context of the conflicts. This is because only a small number of people worldwide are knowledgeable about international trade laws (Md. Habib Alam,2019). Therefore, the advantages include increasing

capacity in trade law and dispute settlement, influencing the interpretation and execution of WTO rules, and safeguarding their economic and trade interests. Furthermore, such engagement reinforces their commitment to multilateralism, improves regional integration, and fosters diplomatic networking. By capitalizing on these advantages, ASEAN nations may take a more active and effective role in creating the international trade environment, ensuring that their regional interests are appropriately represented and protected.

First and foremost, one of the benefits of ASEAN countries participating as third parties is strengthening regional cooperation and integration. The countries take on third-party responsibilities to promote trust and collaboration within the region and beyond. This also aims to promote internal collaboration and enhance connections with nations beyond the area (Henry Gao,2019). The ASEAN Free Trade Area (AFTA) is an excellent illustration of ASEAN's attempts to improve regional collaboration and integration. AFTA supports intra-regional trade and investment by lowering tariffs and trade barriers between member nations, contributing to Southeast Asia's economic growth and development. It has been stated in the background of the creation of AFTA is to capitalize on the region's enormous potential and complementarities to promote and deepen intra-ASEAN industrial linkages, including the development of strong and competitive small and medium-sized firms (AFTA,n.d). One of AFTA's primary goals was to reduce tariffs on commodities exchanged between ASEAN members. The Common Effective Preferential Tariff (CEPT) program was designed to lower tariffs to 0-5% over a predetermined period, with the ultimate goal of eliminating tariffs. AFTA made it less expensive for enterprises to trade within the area, increasing the flow of commodities, services, and investments across borders (AFTA,n.d).

Active participation in WTO disputes enables ASEAN countries to strengthen commercial ties with non-ASEAN nations. By engaging as third parties, they may shape the interpretation and implementation of WTO regulations to suit their regional interests and objectives. This engagement also assists ASEAN nations in networking with other WTO members, creating diplomatic and economic relations that can lead to larger trade deals and cooperation. ASEAN nations' engagement as third parties in the WTO DS M is a strategic decision consistent with their overall aspirations of regional cooperation and

economic integration. ASEAN has attempted to lower trade barriers and strengthen regional industrial ties through AFTA and other efforts. By participating in WTO disputes, ASEAN nations may safeguard their gains, influence global trade laws, and create a stable, rules-based trading system that promotes collective economic interests. This twin approach in regional integration and aggressive global involvement places ASEAN as a major actor.

The second benefit of being a third party is enhancing ASEAN's role on the global stage. Participation as a third party enables ASEAN to increase its influence and visibility on international issues. By actively participating in global forums and diplomatic efforts, ASEAN expresses its interests and helps to shape international norms and policies. ASEAN nations can help to understand and apply international trade rules by taking part in WTO disputes as third parties. Their contribution may assist in guaranteeing that these regulations are fair and advantageous to poor and emerging economies, while also representing ASEAN’s interests. ASEAN’s active participation in WTO disputes demonstrates its commitment to a rules-based international trading system, giving it more credibility and influence in global trade negotiations. ASEAN’s active engagement in global forums and diplomatic endeavors allows it to raise its profile on the world scene. This engagement enables ASEAN to participate in debates and negotiations on significant global issues, ensuring that its opinions are considered for developing international policy. For example, ASEAN-led initiatives, such as the East Asia Summit (EAS), provide opportunities for debate and collaboration on major global challenges, such as climate change, terrorism, and pandemics, amplifying ASEAN’s voice on the international scene (EAS,n.d). It is critical in confidence-building measures and provides top-down direction to technical and senior officials on larger areas of cooperation, which frequently extends beyond the EAS and into other ASEAN-focused forums (Thomas Daniel, 2020). This leadership role enables ASEAN to shape the summit’s agenda and outcomes, ensuring that regional problems are handled within the global strategy framework. ASEAN's actions not only advance its collective interests but also contribute to the stability and predictability of the world trade system, which benefits both the region and the worldwide community.

Last but not least, promoting peaceful dispute resolution and rule-based international trade is also one of the benefits of being a third party in WTO disputes. ASEAN countries’ position as third parties in the WTO DSM aligns

with their regional and global aims. This participation reinforces ASEAN's commitment to peaceful dispute resolution, respect for international norms and regulations, and promote stability and collaboration, all of which are important to ASEAN's diplomatic strategy. For example, ASEAN's role in resolving the South China Sea disputes demonstrates the organization's commitment to fostering peaceful conflict resolution and regional stability. As in those disputes, ASEAN's mediation efforts aim to avert conflict escalation while maintaining peace and stability in the South China Sea (ASEAN,2012). By encouraging conversation and collaboration, ASEAN helps to resolve conflicts peacefully and productively, reducing the possibility of armed conflict or destabilizing acts. ASEAN also underlines the significance of freedom of navigation and overflight in the South China Sea under international law, including UNCLOS (ASEAN,2012). By preserving these values, ASEAN guarantees that all nations' marine routes remain accessible and secure, promoting regional trade, commerce, and economic growth.

To conclude, ASEAN's participation as a third party in WTO DSM demonstrates its proactive approach to tackling regional and global concerns, while protecting its collective interests and improving the well-being of its member nations. ASEAN aspires to provide a stable and predictable environment for trade and investment, preserving the region's resilience and prosperity in changing global dynamics. Finally, ASEAN's position as a mediator and advocate for peace and cooperation demonstrates its importance in determining the world's future.

5. Challenges and Limitations and Strategies for Effective Engagement

Although it can be seen that ASEAN countries do have an important role in WTO disputes as third parties and it also comes with a few advantages, there are also undeniable challenges and limitations to be faced. First, resource constraints. Some ASEAN countries have limited financial resources and they face significant budgetary constraints. This directly affects their ability to participate in WTO negotiations. One may refer to the Philippines – Taxes on Spirits (DS396,DS403) (2010) case, in which the Philippines faced the US and the EU in a protracted and expensive legal battle. Here, the smaller ASEAN economies may find their financial resources strained by the cost of these disputes. In this regard, it could be argued that nations such as Laos and Cambodia might find it difficult to set aside enough money for significant

involvement in WTO procedures. Limited human resources also become a challenge due to the shortage of trained personnel with expertise in WTO laws and procedures in ASEAN countries. Without the right tools or experts, effective representation and negotiation may not be possible. It can be seen in Indonesia – Import Licensing Regimes (DS477, DS478) (2018), whereby the complexities of WTO litigation require substantial legal expertise, often limited in developing countries.

Next, there is also the matter of diverse national interests within ASEAN. It is a fact that the varying political orientations and differing priorities, particularly regarding security concerns, among the countries in the region pose significant obstacles to regional integration (Khani,2018). However, it is crucial to note that to guarantee the success of the organization, all member states must abide by three fundamental ASEAN principles namely responsibility, respect, and restraint. "Respect" between states is demonstrated by regular consultation, "restraint" is a pledge to refrain from interfering in one another's internal affairs, and "responsibility" is taking into account each member's interests and concerns (Koesnaidi and et al,2014). In upholding the principles, it can become a challenge for ASEAN countries to participate in WTO DSM as third parties. For instance, the economic diversity among ASEAN members means that their priorities in trade negotiations can differ significantly. The case of Vietnam – Anti-Dumping Measures on Stainless Steel (DS518) (2018) illustrates how economic priorities can vary within ASEAN. Vietnam's interest in protecting its domestic industry through anti-dumping measures conflicted with broader ASEAN trade liberalization goals. Differences in national policies on issues such as agriculture, industry, and services create additional challenges. For example, while Thailand might prioritize agricultural subsidies, Malaysia might focus more on industrial tariffs, leading to potential conflicts in ASEAN's collective position. The case of Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines (DS371) (2019) demonstrates the difficulties in aligning national policies with ASEAN's collective stance due to divergent national interests.

Third, lack of legal expertise and capacity. The lack of thorough legal training programs centered on WTO laws in many ASEAN countries limits the effectiveness of dispute settlements. Referring to Thailand – Cigarettes (Philippines) (DS371) (2019), this case highlights the significance of possessing strong legal expertise to handle intricate WTO disputes effectively. Not only that, in the Philippines – Measures Affecting Trade and

Investment in the Motor Vehicle Sector (DS55,DS64) (1998), this case demonstrates how limited access to legal resources can affect the ability to defend and advance national interests in WTO disputes effectively. This shows that a shortage of comprehensive legal resources and research facilities dedicated to international trade law would be a significant limitation. ASEAN countries depend on external advisors due to the scarcity of in-house legal expertise. Reference can be made to Malaysia – Measures Affecting the Importation of Polyethylene and Polypropylene (DS1) (1995) as one of the early WTO disputes involving Malaysia, this case underscored the challenges faced by ASEAN countries in developing in-house legal capacity. Malaysia's reliance on external legal expertise illustrated the difficulties in retaining institutional knowledge and building sustainable legal expertise within the country. Dependence on external advisors will affect the effectiveness of a country in their participation in WTO dispute settlement and can limit sustainable capacity building (Mokhtari Hashi,2020).

6. Strategies for Effective Engagement in WTO Dispute Settlement Mechanism

The process of removing obstacles that separate neighbouring nations through cooperation and cooperatively managing shared resources and assets is known as regional integration (Sadeghlou,2019). Applying this concept, to overcome the challenges, a few strategies can be adopted by the ASEAN nations. Firstly, administer capacity-building initiatives. This could be done through training programs where ASEAN countries can collaborate with international trade organizations to design and conduct specialized training workshops and courses. These programs should be tailored to address specific needs and challenges faced by ASEAN member states. For example, a workshop organized by the WTO, UN Trade and Development (UNCTAD), and the International Trade Centre (ITC) could include topics such as WTO dispute settlement procedures, trade policy analysis, and negotiation skills. Looking at the case of Thailand – Cigarettes (Philippines) (DS371) (2019), which involves the customs valuation of imported cigarettes from the Philippines to Thailand. This case underscores the importance of having robust legal expertise and the capacity to navigate complex WTO litigation successfully. In this case, the Philippines' ability to present its case persuasively emphasizes how important legal and technical expertise is to getting the results you want in WTO disputes.

Hopefully, the suggested programs would equip government officials with the necessary skills and knowledge to effectively participate in WTO processes, improving their ability to advocate for national and regional interests. On the other hand, ASEAN nations also have the option to proactively pursue technical support from global institutions to enhance their institutional capabilities and infrastructure. This support may come through technical training, capacity-building seminars, and advisory services. UNCTAD, ITC, and World Bank programs can offer customized support to improve legal and technical proficiency in trade-related areas. At the same time, ASEAN countries can benefit from technical assistance by strengthening their legal systems, comprehending WTO regulations, and being better equipped to engage in WTO dispute resolution procedures.

Strengthening intra-ASEAN coordination requires a centralized coordination body. Such a body or task force within ASEAN should be established to coordinate activities related to the WTO. This body can oversee the development of regional strategies, facilitate information sharing, and support member states. For instance, the ASEAN Coordinating Committee on Services (CCS) can serve as a model for creating similar bodies focused on WTO-related activities. Implementing this strategy will lead to more coherent and strategic participation of ASEAN in WTO matters, ensuring that regional interests are effectively represented. Having shared resources should be opted by the ASEAN countries meaning that there should be a system for sharing legal and technical resources among ASEAN member countries. This can include creating a centralized database of legal documents, research outputs, and technical analyses. An example would be the ASEAN Trade Repository, which provides trade-related information and can be expanded to include WTO-related legal resources and case studies.

Through this effort, it will enhance the capacity of all ASEAN countries, especially those with limited expertise, to engage effectively in WTO processes and disputes. Regional organizations formed through collaboration between neighboring countries play a vital role in overcoming barriers to regional cooperation. They offer a structured environment for fostering trust, facilitating dialogue, and conducting negotiations. These organizations provide a platform to establish reliable engagement rules and ensure fair distribution of benefits and costs. They also possess the technical expertise to analyze and implement regional cooperation strategies. They serve as a means to pool or attract financial resources for regional infrastructure investments or

to compensate those adversely affected. Additionally, they act as mechanisms for monitoring agreement implementation and resolving any disputes (Mokhtar Hashi,2020). Surely, ASEAN organizations or centralized bodies play a huge role in improving their capacity to participate and engage in WTO activities and disputes.

Furthermore, partnerships should be formed with other WTO members and international organizations by forming strategic alliances with other WTO members who share similar interests to strengthen negotiation positions and influence within the WTO. For instance, ASEAN could partner with the African, Caribbean, and Pacific (ACP) Group to advocate for common interests in areas like agricultural subsidies, market access, and special and differential treatment. Collaboration with international organizations should also be done. Through influencing the intricate web of relationships produced by the regional structure and member interactions, international actors including international organizations pursue their interests and objectives in the process of regional evolution (Elhami and Kazem,2020). ASEAN should develop partnerships with organizations such as UNCTAD, ITC, and the World Bank to gain technical support and insights into complex trade issues. These partnerships can involve joint research, technical assistance, and capacity-building programs. Collaborations can also be done regarding resource sharing in the form of training of ASEAN legal officers or support to the panel and appeal processes, given that the WTO has abundant expertise to offer (Oshikawa,2013). Through collaborations, it will benefit ASEAN in resource-saving and knowledge sharing which is crucial to have a more effective role in the WTO DSM.

7. Conclusion

The participation of ASEAN countries as third parties in the WTO DSM is a complex and multifaceted aspect of international trade diplomacy that presents both opportunities and challenges. This study has highlighted the important role that ASEAN countries play in the WTO DSM, emphasizing the benefits of their participation, the challenges they face, and the strategies they can use to engage more effectively.

ASEAN, a regional intergovernmental organization of ten Southeast Asian countries, has consistently demonstrated its support for multilateralism and a rules-based international trading system. The WTO’s structured dispute settlement mechanism provides an ideal platform for ASEAN countries to

participate in global trade governance. ASEAN countries can influence the interpretation and application of international trade rules, protect their economic interests, and promote a fair and predictable global trading environment by intervening in WTO disputes as third parties.

One of the primary advantages of ASEAN countries serving as third parties in WTO disputes is increased capacity in trade law and dispute resolution. Participation in WTO disputes provides ASEAN countries with valuable experience and expertise in international trade law, which is required for successfully navigating the complexities of the global trading system. This experience also helps to build a strong legal and institutional framework within ASEAN countries, allowing them to better advocate for their interests in future trade negotiations and disputes.

Furthermore, ASEAN member countries' participation in WTO disputes serves to protect and advance their economic and trade interests. As developing countries, ASEAN members frequently face significant global market challenges, such as trade barriers and unfair practices by larger economies. By participating as third parties, ASEAN countries can advocate for more equitable trade rules and practices, ensuring that their exports and imports are treated equally. This participation also enables ASEAN member countries to address specific trade issues that may impact their economies, such as agricultural subsidies, intellectual property rights, and technical trade barriers.

Another significant advantage of ASEAN countries' involvement as third parties in WTO disputes is the promotion of regional cooperation and integration. ASEAN's collective approach to the WTO DSM demonstrates their regional solidarity and cooperative spirit. ASEAN countries can strengthen their position in global trade negotiations and dispute resolution. This collective action benefits individual member countries while strengthening ASEAN's position as a key player in international trade governance.

Furthermore, ASEAN countries' active participation in WTO disputes strengthens their position and visibility on the international stage. By engaging in high-profile disputes, ASEAN countries can increase their visibility in international trade forums and demonstrate their commitment to a rules-based trading system. This increased visibility and influence may result in stronger diplomatic and economic ties with other WTO members, creating new opportunities for trade and investment.

Despite these advantages, ASEAN countries face challenges and limitations as third parties in WTO disputes. Resource constraints, diverse national interests, and a lack of legal expertise and capacity are the major obstacles to their effective engagement. Due to limited financial resources and human capital, ASEAN countries struggle to participate in complex and protracted WTO disputes. Furthermore, ASEAN members' economic diversity means that their priorities and interests in trade disputes can diverge significantly, making it difficult to present a cohesive regional position.

To address these challenges, ASEAN countries can employ several strategies for more effective participation in the WTO DSM. Capacity-building initiatives, such as training programs and technical assistance, can help ASEAN countries improve their legal and technical expertise in trade and dispute resolution. Strengthening intra-ASEAN coordination through centralized coordination bodies and shared resources can also help ASEAN members participate more effectively in WTO disputes. Furthermore, forming strategic alliances with other WTO members and international organizations can provide ASEAN countries with the assistance and insights they require to navigate complex trade issues.

In conclusion, ASEAN countries' participation as third parties in the WTO Dispute Settlement Mechanism is critical for promoting a fair and predictable global trading system. By actively participating in WTO disputes, ASEAN countries can protect their economic interests, help to shape international trade law and increase their role and visibility in global trade governance. To fully realize these benefits, ASEAN countries must address the challenges and limitations they face through effective capacity building, coordination, and strategic collaboration. As ASEAN deepens its economic integration and expands its global trade relations, its role in the WTO DSM is expected to grow significantly, reinforcing the importance of a rules-based multilateral trading system for the region's prosperity and stability.

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