Pak. j. life soc. Sci. (2025), 23(1): 2492-2504 E-ISSN: 2221-7630;P-ISSN: 1727-4915

Pakistan Journal of Life and Social Sciences

www.pjlss.edu.pk

https://doi.org/10.57239/PJLSS-2025-23.1.00195

RESEARCH ARTICLE

Evaluation of Dispute Resolution Mechanism of China ASEAN Free Trade Area

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ARTICLE INFO

Received: Jan 13, 2025

Accepted: Jan 21, 2025

Keywords

China ASEAN FTA

Dispute mechanism

Institutional optimization and improvement

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ABSTRACT

With advancement of economic construction and various measures in the China ASEAN Free Trade Area, investment cooperation has developed rapidly between China and ASEAN. However, the speed of investment cooperation is directly proportional to the occurrence of investment conflicts. The current series of agreements signed between China and ASEAN have pointed the way for the resolution of investment disputes between the two sides, but these methods of resolving investment disputes have shortcomings in practice, such as detachment from practice and limited scope of application. This dispute mechanism is no longer sufficient to fully resolve many disputes in the newly added investment field. In this regard, based on the characteristics of the China-ASEAN Free Trade Area（CAFTA） and the particularity of investment disputes, we should expand the scope of application subjects, improve the selection procedure of the arbitral tribunal, set up Permanent establishment, improve the review and correction procedures and the retaliation system. Through these measures, optimize the investment dispute resolution rules of the CAFTA in order to adapt to the significant development of the free trade area.

BACKGROUND

At present, the development of the world economy is moving towards economic globalization and regional economic integration. The cooperation between countries is also naturally deepening. The process of integration is related to regional economy, law, development and international relations. The establishment of a free trade area, is the most common form of cooperation in regional economic integration. Other forms include economic union, customs union, preferential customs area, common market, political integration, etc. A free trade area generally refers to a situation in which two or more sovereign countries or separate tariff zones advocate free exchanges of markets, means of production and commodities by signing agreements, and seek win-win results in the free trade area. The increase of trade cooperation and investment behavior will bring about economic frictions and disputes among countries, and the corresponding negative consequences will also appear (Chirathivat,2003).

If the free trade area is not supported by institutional or constitutional safeguards, it will not continue to be effective. At the same time, as the economic environment becomes more challenging, investors expect a higher level of security to ensure the safety and sustainability of their investment. Therefore, in the process of mutual cooperation between countries, the way of dispute settlement is particularly important (Jie and Tian, 2020).

In 2010, on the basis of establishing a strategic partnership oriented to peace and prosperity, China and the Association of Southeast Asian Nations (ASEAN) established the China ASEAN Free Trade Area (CAFTA). CAFTA was established under the Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN signed in Phnom Penh, Cambodia on November 4, 2002 (hereinafter referred to as the Framework Agreement) (Rosenberg,2009). The launch of the FTA has injected fresh blood into the ASEAN market and accelerated the pace of bilateral cooperation (Astarita,2009). According to the statistics of the China Ministry of Commerce, ASEAN and China are each other's largest trading partners by 2022.

At the beginning of 2020, COVID-19 broke out in the world. Against the background of the global economic downturn, the trade between China ASEAN grew against the trend. China's all-industry direct investment in ASEAN amounted to US$14.36 billion, a year-on-year increase of 52.1 percent. ASEAN investment in China amounted to US$7.95 billion, up 1.0% year-on-year[1]. According to the data of the Statistical Bulletin of China's Foreign Direct Investment in 2018, ASEAN countries account for three of the top ten countries (regions) in China's foreign investment flow, and ASEAN has become a key region for Chinese enterprises to invest abroad. From January to September 2020, China's industry-wide direct investment in ASEAN amounted to $10.72 billion, up 76.6% year-on-year. In the course of overseas direct investment, investors will inevitably have disputes with host governments. In the current situation of unequal status, how to deal with the relationship between the two has become a key issue in promoting investment activities at this stage (Astarita,2006).

CAFTA has set up a corresponding dispute settlement mechanism, but is this setting reasonable and efficient? Is it can really properly resolve disputes in CAFTA's special and new generation FTA? And is it can form a long-term mechanism to ensure the efficient operation of the FTA? They need to be evaluated (Massimo,2022). CAFTA dispute settlement mechanism is based on the WTO dispute settlement mechanism. Although it gives consideration to fairness and efficiency as much as possible, this mechanism is obviously lack of practical testing and needs more comprehensive evaluation.

2. The main content and procedures of the CAFTA dispute settlement mechanism

China and ASEAN signed the Dispute Resolution Mechanism Agreement of the China ASEAN Comprehensive Economic Cooperation Framework Agreement (hereinafter referred to as the Dispute Resolution Mechanism Agreement)[2] in November 2004, which came into effect in January 2005. This agreement provides an important Sources of law for the parties to settle economic and trade disputes, escorts the steady progress of economic and trade relations, and plays a significant role in promoting the development of the China ASEAN Free Trade Area (CAFTA). The Dispute Resolution Mechanism Agreement is important for China and ASEAN as a whole to legitimize the region. Economic cooperation and trade exchanges among ASEAN member countries have also increased year by year, and the process of rule of law within ASEAN has not been very fast. The cooperation between China ASEAN and its member countries is often determined in the form of cooperation statements or memorandums of understanding that lack legal binding force. This form of cooperation lacks clear provisions on rights and obligations, and its legal effectiveness is not strong, which is not conducive to the rule of law process in the entire region of China and ASEAN. An important weakness that hinders the development of economic management and the realization of rule of law within the CAFTA is the lack of a systematic and effective dispute resolution mechanism. The Dispute Resolution Mechanism Agreement has to some extent made up for this weakness and provided important legal support for dispute resolution in the China ASEAN region. It is a significant

[1] Economic and Commercial Office of the Chinese Mission to ASEAN (2021-01-25). *Brief introduction to China ASEAN economic and trade cooperation in 2020. Economic and Commercial Office of the PRC Mission to ASEAN*, Ministry of Commerce of the People's Republic of China.http://asean.mofcom.gov.cn/article/o/r/202101/20210103033653.shtml.

[2] Ministry of Commerce of the People's Republic of China （2005-07-20） http://www.mofcom.gov.cn/article/Nocategory/200507/20050700180197.shtml

progress in the legal process of the CAFTA. However, there are still many problems with this mechanism and there are no rich practical cases, so the remedies for violations of various agreements under the CAFTA framework still need to be improved.

2.1 Scope of applicable disputes

According to Article 2, Paragraph 1 of the Dispute Resolution Mechanism Agreement, the Dispute Resolution Mechanism Agreement applies to all investment disputes arising under the Comprehensive Economic Cooperation Framework Agreement, including its annexes[3]. The definition of investment is stipulated in Article 1 of the China-ASEAN Investment Agreement, this establishes a fairly broad scope of application for the CAFTA dispute resolution mechanism. According to Article 2 (5) of the Dispute Resolution Mechanism Agreement, the Dispute Resolution Mechanism Agreement does not exclude the application of dispute resolution procedures under a treaty to which both parties to the dispute are parties. This means that dispute resolution has other options. However, according to Article 2 (6), if a dispute resolution procedure has been initiated under the CAFTA mechanism, the disputing party shall not apply other dispute resolution procedures. This is an exclusive provision established on the basis of selectivity, as well as a restrictive provision for selectivity, to prevent the chaotic situation where the same dispute arises simultaneously in multiple dispute resolution mechanisms. In addition, Article 2 of the Dispute Resolution Mechanism Agreement also stipulates that the parties to the dispute may explicitly agree to choose more than one place of dispute settlement, fully respecting the autonomy of the parties to the dispute (Ke, 2023).

Overall, the provisions of the Dispute Resolution Mechanism Agreement on its scope of application are very broad, covering most disputes. The optional provisions also provide greater freedom for both parties to the dispute. However, from another perspective, such regulations also to some extent reduce the legal enforceability of the CAFTA dispute resolution mechanism. Furthermore, the Dispute Resolution Mechanism Agreement explicitly stipulates that non violation actions are not allowed and non violation actions are excluded from the jurisdiction (Qiuyi, 2015). Therefore, the jurisdiction of the CAFTA dispute resolution mechanism is also somewhat restrictive, that is, only actions that violate the China ASEAN Framework Agreement can apply the dispute resolution mechanism (Binling, 2009).

2.2 Consultation

The relevant content of the consultation procedure is stipulated in Article 4[4]. The negotiation procedure precedes the arbitration procedure. If there is a situation where the benefits directly or indirectly obtained under the Framework Agreement are being lost or diminished, or which prevent the achievement of any of the objectives of the Framework Agreement. As long as it is in the above two situations, negotiations can be initiated. This provision provides a relatively wide range of applicable conditions for the negotiation process. The conditions required for negotiation requests are also relatively simple, as they only need to be sent in writing to the defendant and other contracting parties. The request should include basic information such as the facts of the accusation and legal basis. If the requested party fails to respond within 7 days or fails to negotiate within 30 days, the applicant has the right to apply for the establishment of an arbitration tribunal. Provisions of paragraphs 4 and 5 regarding the provision of sufficient information and confidentiality obligations by both parties to the dispute during the negotiation process are similar to those of the World Trade Organization (WTO).

2.3 Mediation

[3] Article 2. (2021). Dispute Resolution Mechanism Agreement of the China ASEAN Comprehensive Economic Cooperation Framework Agreement. https://www.docin.com/p-2626934184.html [21 July 2024].
[4] Article 4. (2021). Dispute Resolution Mechanism Agreement of the China ASEAN Comprehensive Economic Cooperation Framework Agreement. https://www.docin.com/p-2626934184.html [21 July 2024].

The mediation is stipulated in Dispute Settlement Mechanism Agreement Article 5, and are relatively brief in content[5]. Mediation can be initiated and terminated at any time according to the wishes of the parties to the dispute. It may be carried out simultaneously with the arbitration proceedings with the consent of the disputing party. From the traditions of ASEAN countries and China, the most preferred way to resolve disputes is through mediation or mediation. Taking China as an example, it can be seen from ancient sayings such as "peace is precious" and "big matters are reduced to small ones". The confidentiality obligations of the parties to the dispute are also agreed upon through consultation.

2.4 Arbitration

Arbitration procedure is the most important core procedure in the CAFTA dispute resolution procedure. The Dispute Resolution Mechanism Agreement also provides a large number of provisions for it, distributed from Article 6 to 11, and the Appendix "Arbitration Rules and Procedures" of the Dispute Settlement Mechanism Agreement[6].

According to Article 6, the arbitration application shall include the specific measures, facts, and legal basis of the lawsuit. According to Article 7, the arbitral tribunal shall consist of three arbitrators. Each of the parties to the dispute shall appoint an arbitrator within a certain period of time; if one of them fails to do so, the arbitrator appointed by the other shall be a sole arbitrator. Arbitrators are required to maintain neutrality and independence in the process of performing their duties. How parties can choose arbitrators to facilitate their own arbitration in accordance with interstate arbitration practice. These factors have led to arbitrators sometimes being seen as agents of one party to the dispute. This requires a third arbitrator to balance the situation, the president of the tribunal, chosen jointly by the parties to the dispute. Arbitral tribunal cannot be nationals of the parties to the dispute, or shall have their habitual residence or be employed by them. There is no permanent arbitral tribunal or fixed roster of arbitration members; the arbitral tribunal is constituted on an ad hoc basis.

The function of the arbitral tribunal appears in Article 8. The functions of the arbitral tribunal include reviewing the case facts, clarifying the applicability of the Framework Agreement and its annexes, and conducting a review of the consistency between the measures implemented by the respondent and the Framework Agreement. If the defendant's measures do not comply with the provisions of the agreement, it is necessary to provide suggestions and specific methods for implementing the suggestions. The arbitral tribunal shall consult regularly with the parties to the dispute with a view to reaching a mutually satisfactory solution and rendering an award and state its findings of fact and law and reasons in the award. The arbitration award shall be made unanimously by all arbitrators. When consensus cannot be reached, a ruling shall be made based on the majority opinion.

Article 9 stipulates the specific procedures for arbitration[7]. Firstly, the arbitration process is not public. Due to the absence of a permanent arbitration tribunal, the location of the substantive meeting between the parties to the dispute should be determined by mutual agreement. If no agreement can be reached, the first meeting will be held in the capital of the defendant, the second meeting will be held in the capital of the plaintiff.

The sixth paragraph is about the relevant requirements for arbitration review. Firstly, parties to the dispute are not allowed to attend. And secondly, the review shall be kept confidential, and the personal opinions of the arbitrator shall be anonymously disclosed. Before reaching a final award,

[5] Article 5. (2021). Dispute Resolution Mechanism Agreement of the China ASEAN Comprehensive Economic Cooperation Framework Agreement. https://www.docin.com/p-2626934184.html [21 July 2024].
[6] Article 6 and 11. (2021). Dispute Resolution Mechanism Agreement of the China ASEAN Comprehensive Economic Cooperation Framework Agreement. https://www.docin.com/p-2626934184.html [21 July 2024].
[7] Article 9. (2021). Dispute Resolution Mechanism Agreement of the China ASEAN Comprehensive Economic Cooperation Framework Agreement. https://www.docin.com/p-2626934184.html [21 July 2023].

the arbitral tribunal shall deliver a draft report to the parties to the dispute, including the facts of the case, the opinions of the parties to the dispute, as well as the arbitral tribunal's investigation results and conclusions. The arbitral tribunal shall submit the final award report to the disputing party within 120 days from its formation, and in special circumstances, it may be extended to 180 days. This shorter time regulation meets the needs of rights protection. Because the actions of the fault party in the dispute may cause significant economic losses to the prosecution, the delay in legal proceedings is very detrimental to rights and interests[8].

Article 11 provides for the suspension and termination of arbitration procedures[9]. With the consent of the parties to the dispute, arbitration may be suspended at any time, but not for more than 12 months. The arbitration proceedings may also be terminated at any time prior to the distribution of the arbitration report, if the disputing parties so agree[10].

2.5 Implementation

The purpose of the dispute resolution mechanism is to be able to effectively settle international disputes, so whether the award can be enforced is very important. Provisions on enforcement procedures are in Article 12. The losing party has the obligation to notify the winning party of its intention to implement the arbitral tribunal's recommendation and award. If the award cannot be enforced immediately, the losing party shall be entitled to a reasonable time limit for enforcement. This reasonable period shall be agreed upon by both parties to the dispute or determined by the arbitration tribunal. During the execution period, if the parties to the dispute have objections to the execution of the losing party, they may submit it to the arbitration tribunal for decision, and the arbitration tribunal shall make a report within 60 days. This is to prevent the establishment of a separate arbitration tribunal for the same dispute and to avoid the waste of legal resources.

An important part of the enforcement procedure is the provision of compensation and suspension of concessions or benefits. This is an interim remedy for the failure of the losing party to comply with the award within a reasonable period of time, and the specific provisions are similar to the relevant provisions on compensation and suspension of concessions in the WTO. Compensation is the choice of voluntary consultation between the parties to the dispute. If the losing party fails to fulfill its obligation to enforce the award within a reasonable time limit, the winning party may request to negotiate with the losing party on compensation. Suspension of concessions is to retaliate against the defendant's failure to fulfill its enforcement obligations, for example, the winning party may suspend the implementation of the tariff concessions already reached against the losing party. Discontinuance of interests means that the prosecution may suspend various interests in trade other than tariff concessions. Moreover, the criteria for imposing compensation and suspension concessions or benefits are determined by the arbitral tribunal, which also prevents the abuse of compensation and suspension concessions or benefits. Compensation and suspension of concessions or benefits are only a means, not an end, of exerting pressure on the losing party.

Generally speaking, the Agreement on the Dispute Settlement Mechanism imitates the design of the WTO dispute settlement mechanism in many places, has certain practicability, and can solve disputes arising in CAFTA to a certain extent. However, the Agreement on the Dispute Settlement Mechanism is not yet perfect, and it still needs to be further revised and supplemented to support the smooth operation of the CAFTA dispute settlement mechanism. Building a sound and sound dispute

[8] Wei Bonan. (2020). Analysis on the Arbitration Dispute Settlement Mechanism of ASEAN–China Free Trade Area. *Journal of Party and Government Cadres* (08), 31-34. doi: CNKI: SUN: DGXK.0.2020-08-006

[9] Article 11. (2021). Dispute Resolution Mechanism Agreement of the China ASEAN Comprehensive Economic Cooperation Framework Agreement. https://www.docin.com/p-2626934184.html [21 July 2023].

[10] Zhu Feifan. (2018). *Research on China ASEAN Intellectual Property Dispute Settlement Mechanism* (Master's Thesis, Wuhan University) https://kns.cnki.net/KCMS/detail/detail.aspx?dbname=CMFD201901&filename=1018194219.nh.

settlement system is indispensable for good economic protection, social development and legal operation.

3. Analysis of the Defects of the CAFTA Dispute Settlement Mechanism

CAFTA has established a set of rules and agreements, including economic development and cooperation. If there is no relatively complete and effective dispute resolution mechanism, it will be impossible to timely and properly resolve the problems encountered in the implementation process of the Framework Agreement, and the future development of the free trade zone will also be overshadowed by the failure to effectively define and protect the rights and obligations of the disputing parties. All international economic and trade dispute settlement mechanisms have one standard, which is the "ideal law" of the international trade dispute settlement mechanism. The CAFTA dispute resolution mechanism clearly has some issues.

Firstly, the issue of the applicable subject. Considering that the Framework Agreement and its annexes, including any subsequent legal documents signed under the Framework Agreement, are or will be signed by the Chinese government and the governments of the ten ASEAN countries. Therefore, the parties involved can only be the contracting member states under the aforementioned agreements or legal documents, and cannot be any natural or legal persons, even under the Framework Agreement and relevant annex agreements, such as the CAFTA Service Trade Agreement, the service provider may be a legal or natural person within the territory of any contracting state. Disputes between legal persons or natural persons and contracting states can only be resolved based on the application of ICSID (The International Center for Settlement of Investment Disputes) or the United Nations Commission on Trade and Arbitration Rules, and cannot be governed by the CAFTA dispute resolution mechanism.

Secondly, there are deficiencies in the jurisdiction system. The jurisdiction mechanism in the Dispute Resolution Mechanism Agreement plays its jurisdictional role on the premise that the parties have chosen the CAFTA dispute resolution mechanism. In short, this dispute settlement mechanism is an exclusive choice of jurisdiction. Of course, this choice of jurisdiction also has its two sides. On the one hand, the autonomy of the parties is respected, and on the other hand, it may also exclude some disputes from the jurisdiction of the dispute resolution mechanism (Li, 2017).

Thirdly, the issue of personnel establishment in the arbitration tribunal. Taking the Washington Convention as an example, in order to successfully solve problems, it provides for two ways and methods, where the parties are free to choose mediation or arbitration. According to the provisions of the Dispute Resolution Mechanism Agreement, it is not clear how to select relevant arbitrators. So there are obvious deficiencies in the composition of the arbitration tribunal personnel. In the arbitration process, the arbitrator and the chairman play an irreplaceable role and are equally important. In practical operation, CAFTA did not adopt a semi fixed dispute resolution mechanism based on a fixed list of experts, which greatly expanded the selection range of members of the arbitration tribunal. But this also leads to a problem, which is due to the wide range of candidates and even increases the cost of time.

Fourthly, it is difficult for the arbitral tribunal to make a unanimous award. Internationally, arbitration awards are generally divided into independent arbitration tribunals and collegial arbitration tribunals. A sole arbitration tribunal shall make an arbitration award by a sole arbitrator, while a collegial arbitration tribunal shall generally make an arbitration award collectively by three arbitrators. Arbitration generally follows the principle of minority to majority and the principle of following the opinion of the presiding arbitrator. The Dispute Resolution Mechanism Agreement adopts the principle of minority to majority arbitration. But this provision is too simple to solve the problems that exist in arbitration.

The minority obeying the majority can only be applied when the arbitrator becomes an odd number, while in even numbers, it may not form a majority opinion. According to Article 7 (1) of the Dispute Resolution Mechanism, in the absence of an agreement, it usually have 3 arbitrators. However, due to the provision that the parties to the dispute can agree on the number of arbitrators in the arbitration tribunal, it is inevitable that there will be an even number of arbitrators. When the number of arbitrators is even, a majority opinion may not be formed. Even if three arbitrators represent their respective interests or form three opinions, it is difficult to form a majority opinion for making an award.

Fifth, lack of review or appeal procedures for arbitration rulings. When arbitration deviates significantly from the basic procedural requirements, such as obvious dereliction of duty, bias and discrimination, and conflicts of interest discovered on the arbitrator, or when there are deviations and unclear verification of the law on which the award is based, it becomes a question whether the arbitral tribunal's award should continue to safeguard its authority. More often than not, the occurrence of unfair results is often due to the lack of corresponding correction or review procedures, and may even lead to greater conflicts. Therefore, in order to improve the current legal environment, adding a review procedure for arbitration awards to a dispute resolution mechanism mainly based on arbitration and implementing trial limits is beneficial for compensating for individual erroneous judgments and reducing some unnecessary conflicts.

Sixth, the relief measures are unclear. Although the Dispute Resolution Mechanism Agreement Article 13 provides for compensation, suspension of concessions, and retaliatory actions, this cannot truly achieve fairness and justice. It mainly depends on the strength comparison of the two countries. The CAFTA retaliation system also has flaws, which can easily lead to the abuse of cross retaliation measures. Because the CAFTA Dispute Resolution Mechanism Agreement stipulates that "as long as the complainant believes that retaliation in the same department is not feasible or ineffective, it can implement cross retaliation measures." This provision is too general.

The CAFTA Dispute Resolution Mechanism Agreement also lacks relevant provisions for monitoring the implementation of retaliatory measures. Meanwhile, the CAFTA Dispute Resolution Mechanism Agreement only stipulates an "appropriate" level of retaliation by the arbitral tribunal, without a clear standard. For the issue of 'appropriate' standards, the CAFTA Dispute Resolution Mechanism Agreement should at least provide a clear answer between the two. In addition, the regulations on the extent of punishment are also very vague. Although compensation, concessions, or suspension of benefits are stipulated in Article 13, the extent of punishment is not yet clear. This result makes it difficult to grasp and execute in practical operations.

Seventh, there is a lack of supervision in implementation. According to Article 12 (2) of the Dispute Resolution Mechanism Agreement, the arbitration result shall be supervised by the original arbitration tribunal for execution. Adjudication and supervision are inseparable, making it difficult to provide effective supervision. As mentioned earlier, although the Dispute Resolution Mechanism Agreement provides for enforcement procedures, it adopts a voluntary enforcement method for rulings, lacking effective supervision and enforcement guarantees. This is also one of the reasons that affects the authority of rulings and the effectiveness of the dispute resolution mechanism.

Eighth, the avoidance of arbitrators. Avoidance refers to an arbitrator applying to withdraw from the arbitration on their own, or withdrawing from the arbitration at the request of the parties, in circumstances that may affect the fair trial and award of the case. The arbitrator is actually the intermediary arbitrator. If the arbitrator has an interest in one party to the dispute and may affect the fair hearing of the case (even if the fair hearing cannot rule out the reasonable suspicion of the non interested party), the arbitrator should withdraw. There is no clear avoidance provision in the CAFTA Dispute Resolution Mechanism Agreement. This is undoubtedly a clear flaw in the Dispute Resolution Mechanism Agreement.

4. Suggestions for improving the CAFTA dispute settlement mechanism

The limitations of the CAFTA Dispute Resolution Mechanism Agreement, which has been in effect for many years now, to some extent limit its better performance. Therefore, it is necessary to improve the relevant mechanisms.

Firstly, the scope of dispute subjects should be expanded to include private law subjects. Regarding the issues of the parties involved, the scope of the dispute subject should benefit both individuals and enterprises, so that they can also apply the CAFTA dispute resolution mechanism to resolve disputes. At present, in the CAFTA dispute resolution mechanism, the parties to the dispute only refer to ten ASEAN member countries (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam) and China. It is clear that private law entities, namely enterprises and individuals, are excluded from the dispute. Only the governments of CAFTA member countries can file complaints as the subject of disputes, while private law subjects can only seek other dispute mechanisms to resolve disputes (such as ICSID) (Julia,2023). Alternatively, private law entities may seek the intervention of their home country government, and this request cannot be fulfilled unless it involves national interests. The investment enthusiasm of private investors is also constrained to some extent by the limitations of such subject scope (Zhiyu, 2010).

Therefore, drawing on the relevant provisions of the North American Free Trade Area (NAFTA), the scope of dispute subjects in the CAFTA dispute resolution mechanism should not be limited to countries only (Yu, 2007). From a long-term perspective, it should be expanded to include private law entities, such as individuals and enterprises. This CAFTA dispute resolution mechanism will break the monopoly and hereditary situation in the Western world in the field of commercial dispute resolution, especially in the field of commercial arbitration. At the same time, this mechanism will also strengthen further understanding and cooperation between Chinese and ASEAN businessmen and enterprises, further reduce the cost of resolving commercial disputes, and improve the efficiency of trade exchanges between China and ASEAN (Xingrong,2015).

Secondly, the conditions and procedures for selecting and appointing members of the arbitration tribunal should be improved. Both China and ASEAN countries have a group of legal talents with rich arbitration experience and good education. CAFTA can establish a specialized agency to uniformly compile a roster of eligible arbitrators. It is necessary to establish a fixed roster of arbitrators. Without a roster of arbitrators, the parties would be at a loss to appoint arbitrators, as it is very difficult to find professional, independent, and impartial arbitrators among the billions of people in 11 countries. This will also increase the time cost for the disputing parties. At present, each member state has its own roster of arbitrators, which is not very large and should be integrated. However, the roster of arbitrators should not be mandatory, but only serve as a suggested roster for the parties to make a choice from. The parties can designate them in the roster or outside the roster.

Thirdly, establish a permanent dispute resolution governing body or specialized working group. Due to the lack of a fixed dispute resolution body, the economic cooperation and rule of law activities between China and ASEAN do not have specialized groups or councils, and therefore do not truly operate. Therefore, it is necessary to establish a Permanent establishment for dispute settlement and a special working group (Qingqing and Lili, 2012). In addition to the stages of consultation, mediation and mediation in CAFTA, which are presided over by the Trade Commission of the China ASEAN Free Trade Area, the parties to disputes in CAFTA can first carry out the procedures of consultation, mediation and mediation in the dispute settlement mechanism. At the same time, it can also be clearly observed that in the CAFTA dispute resolution mechanism, there may be a lack of a neutral body to preside over, resulting in stagnant negotiations between the two parties or a lack of institutions to supervise and promote the operation of the procedure. Therefore, it is a good suggestion to set up a special neutral institution to preside over the work in the dispute settlement mechanism of China ASEAN Free Trade Area (Bing,2008). Through the work of specialized groups or councils, the

operation and institutionalization of dispute resolution mechanisms have been continuously improved. And further accelerate the facilitation of trade and investment among member countries, thereby creating a better environment (Bing, 2015).

Fourthly, establish sound avoidance rules. According to the avoidance rules, when the chairman of the arbitration tribunal has a situation of avoidance, he/she should proactively request avoidance and disclose the reasons for avoidance to the parties. When the chairman of the arbitration tribunal does not voluntarily withdraw, the parties may also request the arbitrator to withdraw. The avoidance of arbitrators can be reviewed, supervised, and enforced by the chairman of the arbitration tribunal. But when the chairman of the arbitration tribunal needs to withdraw, the arbitrator does not have the right to supervise and enforce. As mentioned earlier, a permanent governing body or working group should be established in the Dispute Resolution Mechanism Agreement, and given the authority to review, supervise, and enforce the avoidance of the chairman of the arbitration tribunal.

Fifth, establish a permanent arbitration institution. A permanent arbitration tribunal refers to a permanent arbitration institution with a fixed organization and location, and fixed arbitration procedure rules. The temporary arbitration tribunal is relatively a permanent arbitration institution, with no fixed personnel. It is formed temporarily at the beginning of the arbitration procedure and disbanded upon the conclusion of the arbitration procedure. According to the CAFTA Dispute Resolution Mechanism Agreement, as long as the plaintiff provides written notice requesting the establishment of an arbitration tribunal, the arbitration tribunal will be deemed to be established. At present, the Dispute Resolution Mechanism Agreement does not establish a permanent management body, but instead adopts a temporary arbitration system, where the temporary arbitration tribunal dissolves on its own after the dispute is resolved. By establishing a permanent arbitration tribunal, frequent investment, service, and trade disputes can be effectively and promptly resolved (Suli, 2005). At the same time, it can enrich its experience in application and make problem handling more efficient. Its advantages and rationality are obvious, and many problems can also be easily solved.

Sixth, clarify the burden of proof of all parties involved. The burden of proof in the current CAFTA dispute resolution mechanism is unclear. The guiding ideology of the allocation of burden of proof is based on the purpose and principle of fair, just and efficient resolution of disputes. So, when clarifying the burden of proof, the main consideration is to prioritize fairness in the allocation of the burden of proof. The allocation of the burden of proof should be qualitative and flexible, and the allocation of the burden of proof should achieve the concept of efficiency. Based on the above guiding ideology, when it comes to the burden of proof, the pen should revolve around the basic allocation principle of "who claims, who provides evidence". Drawing on the theory of burden of proof and risk burden in domestic civil litigation in China. When one party to the dispute is unable or refuses to provide relevant evidence, and cannot prove that its inability to provide evidence is due to the exclusive possession and control of the other party, the other party has the right to request the CAFTA arbitration tribunal to make a presumptive ruling against it (Xingrong and Zongyi ,2007).

Seventh, regarding the improvement of the review and error correction procedures. The CAFTA dispute resolution mechanism lacks review and error correction procedures for arbitration rulings. By drawing on the relevant provisions of the Washington Convention, further and corresponding improvements will be made to address the deficiencies related to the arbitration award review process in the CAFTA dispute resolution mechanism. Specifically, the following provisions are made, and either party may request amendments to the award based on facts and new discoveries that have a decisive impact on the award. In addition, if one or more of the following situations occur, one party may also request the revocation of the award based on this reason. The composition of the arbitral tribunal is inappropriate, the arbitral tribunal clearly exceeds its powers, or the members of the arbitral tribunal engage in bribery (Haitao, 2017).

Eighth, improve the CAFTA retaliation system. Regarding the improvement of CAFTA's retaliation system defects, the first step is to establish a retaliation objection procedure to balance the interests of both parties. Secondly, establish a permanent dispute resolution body (council or working group) in CAFTA to monitor the implementation of retaliatory measures. According to the regulations of the WTO, a supervisory procedure for retaliatory measures will be established, so the entire retaliatory implementation process will be placed under the supervision of the WTO DSB (Dispute settlement body) until the goal is achieved. That is to say, during the implementation of retaliation, in the event that the losing party fails to fulfill the award and makes a measure comply with the relevant agreement, in order to ensure the smooth implementation of the award, it is necessary to better utilize the supervision procedure for supervision. The main purpose of this supervisory procedure is to compel the respondent to comply with the ruling. Finally, while introducing monetary compensation methods, establish the selectivity of monetary compensation (Xingrong, 2017).

Ninth, improve the transparency mechanism. At present, the cases resolved by the CAFTA dispute resolution mechanism are generally not disclosed, and the arbitration stage is also confidential. But in this way, the predictability of the law and its legal significance for social education are lost. Of course, one of the advantages of arbitration over litigation is confidentiality. Therefore, in order to balance confidentiality and openness, cases under the CAFTA dispute resolution mechanism can be made public through the concealment of key information.

Tenth, China and ASEAN countries have signed the "China ASEAN Judicial Assistance Agreement" to ensure the implementation of arbitration judgments and ensure enforcement issues. In the absence of a unified legal system at present, only by strengthening judicial assistance and cooperation in the field of civil and commercial affairs, and constructing a comprehensive system of judicial assistance in civil and commercial affairs in the China ASEAN Free Trade Area, can we eliminate the obstacles brought by legal system differences to economic and trade cooperation, promote the resolution of cross-border economic and trade disputes arising after the comprehensive launch of the Free Trade Area, and provide practical guarantees for the operation of the Free Trade Area (Zengjin and Yingli, 2010).

Finally, in addition to the dispute mechanism, other aspects of improvement also need to be strengthened. The cultivation of CAFTA legal affairs applied talents is crucial. If a country, lacks applied talents in CAFTA legal affairs, whether in responding to lawsuits or popularizing CAFTA related legal knowledge, it will be inadequate. At the same time, the selection of arbitrators and the improvement of the CAFTA dispute resolution mechanism cannot be separated from applied talents. Therefore, various countries should strengthen the cultivation and reserve of legal talents in this field. We need to update the concept of cultivating legal talents.

Law is a highly practical discipline, but universities tend to pursue only one goal in legal education, which is to inherit and disseminate professional knowledge. This higher education training model is single and lacks innovation. We need to change our mindset in the training mode of legal talents and form a unique talent training mode. In the teaching process of legal majors, attention should be paid to cultivating innovative talents. On the other hand, attention should be paid to cultivating students' international awareness, and in non-English speaking countries, bilingual teaching can even be conducted. The necessity of enhancing international competitiveness is a new challenge to the legal education mechanism. Whether the talents cultivated by higher education can quickly integrate into the international community and be recognized by the international community is an important indicator of competitiveness. Establish a sound talent training quality assessment mechanism to truly cultivate high-quality and high-level talents that meet the needs of ASEAN legal affairs (Hongru, 2016).

5 CONCLUSION

The diversity of current CAFTA disputes requires diversified solutions to adapt to it. According to the inherent characteristics of CAFTA, the application of diversified dispute resolution mechanisms in CAFTA regional trade dispute resolution should be attempted. According to the political and economic friction points that are prone to occur between CAFTA member countries, an agreement is reached in advance to minimize the damage to each other's interests through consultation, ultimately avoiding or at least weakening disputes. Legal standardized agreements such as the CAFTA Framework Agreement, the Agreement on Trade in Goods, the Agreement on Trade in Services, and the Investment Agreement are resolved through political means, thereby promoting the construction of a complete legal system for CAFTA. Establishing a comprehensive and functioning diversified economic and trade dispute resolution mechanism not only reflects the trend of modern rule of law society to pay more attention to moral and cultural construction, but also highlights the humanized nature of economic activities by using legal resolution as a last resort. At the same time, the legal system plays a huge role in promoting the economic and trade development between China and ASEAN in this process, and is the cornerstone of long-term cooperation between China and ASEAN.

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