

FINANCIAL COMPENSATION IN TRADE DISPUTE SETTLEMENTS: CAN THE FREE TRADE AGREEMENT EXPERIMENT BE SUCCESSFUL?

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ABSTRACT

Although both World Trade Organization (WTO) Members and scholars have persistently insisted on the necessity of “financial compensation”, it has yet to be materialized. Stagnation in the Doha Round negotiations has shown that it is becoming hopeless, in the short term, to amend the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) in order to introduce a financial compensation system.

On the other hand, in a time of the proliferation of Free Trade Agreements (FTAs), opportunities to develop a financial compensation system through those trade agreements are increasing. When parties of a certain FTA are not satisfied with the current remedy system of the WTO, they may introduce financial compensation in their FTA. Again, however, this has not been materialized in most FTAs except for the agreements concluded by the US.

While the reasons for the failure of financial compensation in the WTO could be attributed to the stagnation of the Doha Round negotiations, the underuse of the system in FTAs implies the impropriety of financial compensation itself in trade agreements. In other words, financial compensation may be perceived as an

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insufficient mechanism in pursuing the objectives underlying the remedy system in trade agreements, i.e., the inducement of compliance or the compensation of damaged industries.

This paper firstly analyzes the effectiveness of a financial compensation system and examines whether it could serve as an alternative or supplement to the current system of suspending concessions in the WTO. It then considers the suitability of such system under FTAs. Although financial compensation is theoretically suitable for FTAs, it also contains drawbacks that may not be acceptable for the parties, e.g., being ineffective in inducing compliance. Furthermore, the only agreements that adopted financial compensations, i.e., the US FTAs, seem not to have contributed to eliminating those deficits. In light of these, this paper concludes that in the laboratory that is each FTA negotiation, both the reluctance of negotiating parties to experiment with financial compensation and their inability to make existing financial compensation measures in FTAs effective instruments of compliance attribute to the destined failure of financial compensation in the FTA process.

KEYWORDS: *WTO remedies, suspension of concessions, financial compensation, Free trade agreement, monetary assessment*