

**In Search for an Optimal Legal/Institutional Framework for the Americas:
Dispute Settlement Mechanisms of the NAFTA and MERCOSUR**

Abstract

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Regional integration needs a legal/institutional framework. Regional integration is not an instant phenomenon. It is an on-going, incremental process which may occasionally take decades for completion. Thus, it needs a legal/institutional framework through which to provide participants with opportunities to meet regularly, negotiate further integration and/or enlargement, settle disputes among them, etc.

Legal/institutional framework of regional integration varies considerably. At one extreme, the EU has the most advanced legal/institutional framework, with a permanent administrative organ (European Commission) with about 20,000 staffs, which also plays an important role in law-making of the EU (regulations, directives and decisions) together with the European Parliament and the EU Council, and an independent and permanent court (Court of Justice of the EC) with 25 judges and 8 Advocates Generals, which renders judgments on lawsuits filed by its member countries, national courts of its member countries, EU organs and EU citizens.

At the opposite extreme, there are regional integration initiatives with lax legal/institutional framework. For instance, the Framework Agreement on Enhancing ASEAN Economic Cooperation to establish an ASEAN Free Trade Area (AFTA) provides for an amicable and non-binding settlement of disputes between the Member States.

The regional integration initiatives of the Americas, started with lax legal/institutional frameworks, mainly state-to-state amicable settlement of disputes, have been shifting toward *enhanced legalization/institutionalization during the last decade*. Focusing on the dispute settlement mechanisms of the NAFTA and MERCOSUR, this paper will analyze the major factors contributing to this phenomenon and assess the performance of these mechanisms. Based on these analyses, it will conclude with a few remarks on the dispute settlement mechanisms of the prospective Free Trade Areas of the Americas (FTAA) and on the possibility of enhanced legalization/institutionalization in East Asia.