Boosting the legal framework

BY LOCKNIE HSU
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THERE has been much discussion of the new Asean Charter in view of the promise it holds. The Charter raises expectations on matters such as decision-making, compliance with agreements, pace of integration, duties of the bloc’s secretary-general and secretariat as well as dispute settlement.

Still, a lot more work is needed to meet the promise of the Charter in these areas. Take, in particular, dispute settlement. Asean already has mechanisms relating to trade and investment disputes, and the Charter seeks to provide more comprehensive-ly for settling disputes beyond these areas. A bigger role for the law is expected in dispute settlement as the regional grouping moves towards a more rules-based system.

This can be seen from the rather wordy final item in the Charter’s list of “Purposes of Asean”: “...adherence to multilateral trade rules and Asean’s rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy.”

How can Asean strengthen itself to move this aspect forward?

In his description of the World Trade Organisation’s dispute settlement system, Singapore’s ambassador K. Kesavanapany referred to the fact that “all countries (in the WTO) have equal access to the law” (The Straits Times, Dec 4).

One of the institutions that help make such access possible is a body that is little-known outside the trade diplomacy circle: the Advisory Centre on WTO Law (ACWL).

Existing independently of the WTO, it is a sort of “legal aid” facility for developing and least-developed countries in the world body, helping them in dispute settlement with other member states. It provides members with legal opinion on the strengths and weaknesses of a case, as well as provides lawyers to represent them at WTO hearings.

In one of its earliest cases, the ACWL represented Peru, a developing country, in its complaint against European Community countries regarding trade description requirements for sardines. The ACWL successfully argued the complaint on behalf of Peru all the way to the appeal stage.

The existence of such a centre therefore makes it possible for a relatively small WTO member with limited resources to get help in a dispute against even an economically powerful bloc.

At the same time, the WTO secretariat itself provides important technical assistance and legal advice to developing country members when needed.

Asean is a neighbourhood of mainly developing and least-developed countries with very different levels of legal resources and international dispute experience. Members accordingly have different levels of ability to cope with legal issues on trade, investment or other intra-Asean disputes.

In order for Asean’s dispute settlement mechanisms to be effective, some urgent consideration of the legal capacity of poorer members to deal with expensive and often-complicated legal disputes is necessary.

While the ACWL may not be the most appropriate model for Asean, the fact remains that adequate legal assistance for the least developed of Asean countries is needed. Already, with the Asean High-Level Task Force’s recommendations in 2003, the Asean secretariat has been strengthened with a legal unit that has the potential to provide advisory assistance. Asean has to continue to strengthen this unit so that it provides access to high-quality legal advice to its poorer members.

This translates into ensuring it has adequate resources and legal personnel to keep abreast of important trade and investment law developments in and out of Asean. Only then will the unit be able to properly advise and assist poorer members during disputes. Asean must also strengthen its knowledge of WTO law, integration issues and international dispute settlement practices. This will ensure its officials, lawyers and judges are equipped with the requisite knowledge to deal with integration and compliance.

Adequate legal training and regular updates in these areas are required so that lawmakers and those who implement and interpret laws in Asean are kept up to date. Training can also help raise awareness and hopefully assist in dispute avoidance in the first place.

The Asean Charter provides a way forward. There are, in the meantime, some practical steps that need to be taken to strengthen the legal infrastructure and know-how within Asean, for the great expectations of the Charter – at least on dispute settlement – to be effectively realised.

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