International Mediation, Dispute Settlement and APEC: Recommendations for the Future

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Introduction

Modest Ambition as Discussion Paper

With an encouraging invitation from the conference organizer, Department of Diplomacy of the National Chengchi University, the author of this paper does not harbor illusion on providing an ambitious writing project here. With time constraint, I will focus the paper on the following four areas: (1) to explore the notion of Alternative Dispute Resolution (ADR), (2) to review APEC’s past achievement towards dispute mediation despite its subsequent termination of the Expert Group, (3) to point to some current APEC schemes relevant to dispute mediation, and (4) to postulate some challenges APEC may face in the context of dispute resolution.

Given APEC’s ongoing debates on the APEC reform, including the issues of non-binding vis-à-vis binding approach and economic vis-à-vis non-economic scope, the focus of this paper will dwell only on international commercial dispute resolution. This is not necessarily exclude the possibility of APEC’s future engagement in the sphere of non-commercial oriented disputes.

APEC into Its Adolescence

As Asia-Pacific Economic Cooperation (APEC) is evolving in the midst of institutional building since its establishment in 1989, there remains much to explore in terms of how best to achieve the organization’s goals entailed in the three pillars—liberalization, facilitation, and economic and technical cooperation. APEC is not a formal international organization with a distinct legal personality. Rather, APEC was a structured forum for mutual consultation and dialogue on a wide range of trade and investment related issues. The Borgor goals of 1994 aimed to achieve free and open trade and investment by the year 2015 for the developed economies, and 2020 for the developing economies. The Osaka Action Agenda of 1995 spelled out the principles for cooperation and key issue areas for liberalization. The Manila Action Plan Agenda of 1996 focused on the six priority areas for economic and technical cooperation. What followed thereafter since 1997 are experimenting various means and ways to implementing the goals with a
unique APEC “concerted unilateral” approach.

Although from time to time APEC seems to be more distracted from the constant pendulum-swinging between shying away from or launching new initiatives [i.e., financial crisis, the Early Voluntary Sectoral Liberalization (EVSL), counter-terrorism, and biodiversity, etc.]. APEC spends less time in attending to the core issues of its own manifestation; APEC’s continuous struggle into its adolescent years remains volatile. This volatility derives from the diverse endowments of the 21 member economies around the Pacific Rim, including variations in culture, value system, legal structure, social fabrics, economic development, and geo-political prowess. The level of diversity certainly dwarfs the counterparts of the European Union (EU) as well as the North America Free Trade Area (NAFTA)/Free Trade Area of Americas (FTAA).

Currently, APEC remains uncertain in forging consensus as to whether to pursue the noble route of “voluntary, non-binding and consensual” approach or to change cause into an envisaged more “binding and rule-based” system. The concept of a Free Trade Area of Asia-Pacific (FTAAP) is currently entertained in 1994, and a feasibility study will seem inevitable if the Leaders see it fit when they meet at Santiago de Chile this November. An FTAAP would certainly connote legally binding agreements, compliance and potential dispute settlements.

In addition to the concern over how best to achieve the Bogor goals, APEC members are uncertain about the extent to which they should expand the issue agenda into non-economic issues. Although it is justifiable at times that most non-economic issues could be trade-related, including anti-corruption and counter-terrorism, APEC members have not wholeheartedly agree on the treatments of these issues in a given time. In the heated debates on APEC Reform, member economies have also explored the territories of scope of coverage as well as the modus operandi.

(1) Alternative Dispute Resolution (ADR)

There are different types of mechanism for dispute resolution. The court systems are traditional source for dispute settlement. The court systems are legalistic, formal, slow, expensive, public and enforceable within the
jurisdiction of the court. However, pursuing actions through the courts for breaches of international commercial obligations fails to meet the needs of the parties involved, both financially and emotionally. Alternative Dispute Resolution (ADR) provides a voluntary alternative to the accepted practice of using the courts to settle civil disputes. The principle forms of ADR are adjudication, arbitration, conciliation and mediation.\(^1\)

Arbitration represents the principal alternative to the court system. Arbitration offers the concept of party autonomy in that the parties have the right and power to decide many of the procedures that will govern the conduct of their arbitration. The parties can decide on the degree of formality they desire, how much time will be allocated to various aspects of the process and how documentation, discovery and the taking of evidence will be handled. Arbitration therefore offers the possibility of informality, speed, cost savings and privacy. Arbitration emulates the courts in some respects and has been described as a private court dispute settlement system. It is therefore a more formal procedure than mediation. Arbitration is essentially adversarial and judicial in nature and leads to a winner takes all result. In this respect, arbitration differs little from litigation.

Adjudication is a quick and inexpensive method of dispute resolution resulting in an immediately enforceable, non-binding dispute settlement, by a third person, known as the Adjudicator. The adjudicator is likely to be an expert first and foremost but may also be a qualified lawyer. Instead of being governed by the statute, the adjudication is governed by the contractual provisions and the rules of the ADR provider.

Facilitation connotes a situation where the neutral third-party simply provides logistical support, helps parties “break the ice” to get down to substantive discussion, stay on track and record the discussion. Facilitation is generally performed in groups greater than six people, so the techniques of a facilitator apply mainly to large-group dynamics.\(^2\) In the discussion later,

\(^1\) For a succinct introductiler, Commissioner, Internatioalon of ADR, see http://www.nadr.co.uk/background

the writer will point out again that facilitation represents APEC’s Individual Action Plan Peer Review Process which could potentially serve as ADR as a gentler form for confidence building and as basis for deciding whether to seek other more formal or effective channel, such as WTO, for dispute settlement. As an UNCTAD’s report points out, voluntary peer review “is not merely a compliance mechanism, but may also be aimed at policy advice, encouraging policy coordination and cooperation, gathering and dissemination of information and best practice model, and providing technical assistance and aid.\textsuperscript{3}

Mediation is regarded as the most flexible and fastest of the ADR techniques as well as being most cost-effective. Mediation is a voluntary, non-binding, without prejudice process. Mediation can transcend international boundaries of language, law, jurisdiction, ideology and culture, with the agreement being concluded subject to the law and jurisdiction of the state where the agreement will be enforced. Mediation removes the threat of expensive litigation and enhances the commercial spirit of cooperation, and thereby maximizes the concepts of dispute management and dispute resolution as opposed to the prevailing mania of distrust and litigation fever. International mediation can strengthen international trade relations and maximize their participation in the global economy.

Many of those who engage in ADR practice are first and foremost experts in particular fields such as architects, builders, civil engineers, mariners, scientists and social workers, albeit with a thorough understanding of ADR processes and some knowledge and understanding of law. In house legal experts in large corporate organizations can take part in the entire ADR process without engaging professional lawyers, thus cutting costs further both in terms of time lost through communicating with the professionals and in respect of legal fees and costs.

Types of Third-Party Engagement in Dispute Settlement

Justice Florentino Feliciano provided some very clear definition on various types of third-party engagement in dispute settlement:

\textsuperscript{3} “Roles of Possible Dispute Mediation Mechanisms and Alternative Arrangements, including Voluntary Peer Reviews, in Competition Law and Policy,” UNCTAD Document #TD/B/COM.2/CLP/37/Rev.1
A more traditional way of looking at the settlement of disputes between states would be to examine the degree to which a third party intervenes in the process of settlement. If the process by which settlement is reached is purely bilateral, the exercise is characterized as negotiations. A Third party may intervene for a strictly limited purpose, say, to bring the parties to sit together and begin inter se negotiations (good offices). In addition to bringing the parties together, the third party may transmit proposals from one party to another; in this case, the process is called mediation. Should the third party be authorized to initiate motu proprio independent proposals for the settlement of the dispute, the process is called conciliation. The third party could, alternatively, be authorized to determine the antecedent facts, or the facts constituting a dispute; in this case, the third party is known as an inquiry commission. If a third party intervenes because he has been authorized to resolve the dispute on his own, there is either arbitration or judicial settlement, depending on whether the third party is chosen on an ad hoc basis, or is part of an institutionalized framework and standing system that is specifically designed for dispute resolution. The third party in this context may be an individual arbitrator, an arbitral board or tribunal, or a judge or court. 4

(2) APEC’s Past Efforts and Current State of Play in Dispute Mediation

The general objective for the OAA issue area of Dispute Mediation was set out in 1995 as:

APEC economies will:

a. encourage members to address dispute cooperatively at an early stage with a view to resolving their differences in a manner which will help avoid confrontation and escalation, without prejudice to rights and obligations under the WTO Agreement and other international agreements and without duplicating or detracting from

WTO dispute settlement procedures;

b. facilitate and encourage the use of procedures for timely and effective resolution of disputes between private entities and governments and disputes between private parties in the Asia-Pacific region; and

c. ensure increased transparency of government laws, regulations and administrative procedures with a view to reducing and avoiding disputes regarding trade and investment matters in order to promote a secure and predictable business environment.

The specific Guidelines for Dispute Mediation were further postulated as follows:

Each APEC economy will:

a. provide for the mutual and effective enforcement of arbitration agreements and the recognition and enforcement of arbitral awards.

b. Provide adequate measures to make all laws, regulations, administrative guidelines and policies pertaining to trade and investment publicly available in a prompt, transparent and readily accessible manner; and

c. Promote domestic transparency by developing and/or maintaining appropriate and independent review or appeal procedures to expedite review and, where warranted, correction of administrative actions regarding trade and investment.

In coherence to the requirements of Collection Action Plans,

APEC economies will:

a. with respect to resolution of disputes between APEC economies;
   i. promote dialogue and increased understanding,
including exchange of views on any matter that may lead to a dispute, and cooperatively examine on a voluntary basis disputes that arise, utilizing policy dialogue such as the “Trade Policy Dialogue” of the CTI;

ii. give further consideration as to how the above Trade Policy Dialogue or similar functions of other fora may be used by APEC economies for the exchange of information, enhanced dialogue and mediation; and

iii. examine the possible future evolution of procedures for the resolution of disputes as the APEC liberalization and facilitation process develops;

b. with respect to resolution of disputes between private parties, and between private parties and AEOC economies:

i. provide CTI with a listing of arbitration, mediation, and conciliation services available to private entities of other APEC economies, including a description of any such service which might provide a useful model for private-to-government dispute resolution in the Asia-Pacific region, and make such information widely available to the business/private sector in the Asia-Pacific region.

ii. Provide CTI with comments regarding experience with the above services;

iii. Accede where appropriate to international agreements for the settlement of disputes between governments and private entities such as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and

iv. Accede where appropriate to the Convention on the Recognition and Envorcement of Foreign Arbitral Awards (New Yhork Convention);

c. with respect to transparency:

promote transparency on an APEC-wide basis, through, for example, publication of a guide book on arbitration, mediation, and conciliation services available in each APEC economy; and

d. with respect to the above collective actions, continue to
In 1995, The Committee of Trade and Investment (CTI) of APEC established the Dispute Mediation Expert Group (DMEG). The work of the DMEG was guided by the six-point terms of reference which were agreed at Vancouver in 1997. These principles are as follows:

a. APEC dispute mediation should be aimed at encouraging greater confidence in the Marrakesh Agreement establishing the WTO and at reinforcing the integrity of WTP procedures.
b. APEC dispute mediation should be without prejudice to rights and obligations under the WTO agreement and other international agreements, and should not duplicate or detract from WTO institutions and procedures.
c. APEC dispute mediation should be voluntary and encourage non-adversarial and voluntary approaches in the mutual economic interests of the parties involved and with due regard for the interests of other APEC members.
d. Work in APEC on dispute mediation should be in keeping with the evolution of APEC’s work on trade and investment liberalization and facilitation goals.
e. APEC members should be encouraged to work within the framework of existing international agreements and conventions for the resolution of disputes involving private parties. By doing so, they will help in the reinforcement of these agreements and conventions.
f. Priority should continue to be given to facilitating access to information on mediation, conciliation, and arbitration services available in member economies.

Under these guidelines, the DMEG successfully created a database of various modes of dispute settlement in the region, which was published in hard copy and posted on the APEC Website. The Guide to Arbitration and Dispute Resolution in APEC Member Economies was meant to enhance exchange of information and promote dialogue.

In 2002, the CTI highlighted the approved project on the Guide to Arbitration and Dispute Resolution in APEC Member Economy, including the expansion of the website to publish the outcome of the HRD project on Alternative
Dispute Resolution—Executive Education Project (ADR-EFP 2000 project) to bring all of APEC’s work on ADR into a single portal. However, less than half of the member economies have responded to the project consultant’s request for nomination of contact points who is knowledgeable about the laws, policies and practices relevant to resolving cross-border commercial disputes, to review the material under their jurisdiction. The Committee also entertained the idea that as part of the confidence building efforts to support the negotiations as mandated in the Doha Development Agenda (DDA), APEC could consider convening seminars or training programs on the WTO Dispute Settlement Understanding.

In 2003, after reviewing and evaluating APEC’s work on dispute mediation, the CTI concluded that the WTO Dispute Settlement Mechanism (DSM) process appeared to be on track and that there was only limited scope for APEC to enhance the on-going work/activities in the WTO. The CTI also agreed that training in policy and legal aspects of the DSM is provided for in many other channels within the WTO, UNCTAD and ESCAP, and that there was no need for APEC to duplicate this. The CTI further decided that regular reporting on dispute mediation was no longer necessary, and can be taken out from the CTI’s agenda. Nevertheless, the Committee also agreed that this would not preclude any APEC member economies from raising the dispute mediation issues for discussion.\(^5\)

(3) APEC Schemes relevant to Dispute Mediation

Although APEC has chosen the course of disbanding the Dispute Mediation Expert Group as stated earlier, there remain a few institutional mechanisms where the function of dispute mediation could be easily built in under the existing circumstances.

(3.1) APEC’s Concerted Unilateral Approach\(^6\)

APEC’s modes of operation to achieve the Bogor Goals is those of

\(^5\) http://WWW.APECSEC.ORG.SG/APEC/APEC_GROUPS/COMMITTEES/COMMITTEE_ON_TRA DE/DISPUTE_MEDIATION.HTM.

“concerted unilateral” approach. One the one hand, the Collective Action Plans (CAPs) within various APEC fora provide benchmarks for guiding progress, and on the other hand, the Individual Action Plans (IAPs) prepared by each member economy serve as engines for progress, in light of the CAPs and on a voluntary and non-binding basis, towards the Bogor Goals.

The CAPs may not have been well orchestrated for various reasons, including: lack of consensus building; lack of concrete measurable targets after general principles are established; lack of concerted efforts in capacity building; or lack of mapping out implementation timeframes, etc. However, the deficiency currently in sight under APEC’s CAPs should not obstruct the pace for IAPs to press ahead.

Nevertheless, IAPs are not confined to the yardstick of CAPs, as many economies take the unilateral approach which transcends the consensus approach of the CAPs. IAPs could create a critical mass within APEC and in turn formulate better CAPs. These actions could serve as catalysts or pathfinders for cheering APEC partners to proceed with a sense of community.

Despite some discontent over the effectiveness of APEC’s “concerted unilateralism,” the institutional modus operandi seems to be here to stay:

This fundamental core organizing “concerted unilateral” principle is not peculiar to the region. The origins of notions such as the “ASEAN Way,” “Asian Way,” or “Asia-Pacific Way” of multilateralism are to be found in the conscious rejection … of “imported models” of multilateralism, and in their call for multilateralism to conform to local realities and practices.7

(3.2) IAP Peer Review8

Appropriate peer pressure could instill a sense of community, which is essential to achieve economic growth and social welfare across the

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8 For the latest version of Individual Action Plan Peer Review Guidelines, see APEC document #2004/SOMI/024
Asia-Pacific region with mutual respect and mutual benefits. The strengths of APEC’s IAP peer review are pointed out by the OECD in that they are entirely voluntary, involve the business sector, record liberalization and reforms since the 1980s and prevent backsliding, while the suggested improvements include being more comprehensive, transparent and user-friendly.¹

The IAP Peer Review Process, endorsed by the APEC Ministers in 2001 and further revised with the latest version in 2004, is aimed at increasing rigor of the peer review regime and encouraging member economies to make greater progress in achieving the Bogor Goals. It is therefore not adversarial; rather it is an interactive process that will ultimately result in a mutual learning experience for all APEC members and individuals involved.

The IAP Peer Review Teams consist of an Expert, a Discussant, and a Professional Staff Member from the APEC Secretariat. Member economies have many occasions to examine a specific economy’s IAP before and after the Review Teams come up with a Study Report, and address issues of their concern. The economy under review is expected to answer each and every question raised in written form, although during the IAP Review Sessions, many more questions and answers could be forwarded verbally and written versions will be required to make all Q&As transparent in the website. Should an expert’s report not be well received by the member economy under review, there will be some consultation session available for the two parties. However, the expert may choose not to revise his/her study report upon thorough consideration.

(3) Bilateral Consultation Sessions: APEC has set up the tradition of conducting bilateral consultation during the informal occasions by the Senior Officials, Ministers, and the Leaders. During or in-between the formal APEC sessions, many bilateral issues could be raised, allied or managed. With the recent proliferation of FTAs on a global scale, APEC also joined the FTA tent and forged FTAs during the APEC occasions.

With the existing mechanisms and windows of opportunities, APEC has made a difference in promoting trade liberalization and facilitating

investment flows in the region. This could be observed from the improved levels of openness and transparency of the trade and investment regimes of member economies. While APEC cannot take the credit alone, APEC does help in speeding up the liberalization process in a cozy, friendly, non-confrontational and mutually learning fashion.

(4) Observation and Recommendations for Future Dispute Mediation in APEC:

(4.1) An Exemplary Self-Generated Sun-Set Clause: Given APEC’s current priority agenda in a given issue-attention cycle, the issue of dispute mediation is marginalized with little or no interest of member economies. No doubt, APEC should focus on what it is best at with realistic view on its resources. Furthermore, with APEC’s efforts in streamlining organizational structure in the wake of APEC reform, it is understandable that dispute mediation is currently sidelined with seemingly workable mechanism in the external environment. In a way, this self-termination could well serve as an exemplary for other Working Groups in that critical self-review of their own functional utilities in a given time does add to the overall value and credibility of the organization.

(4.2) Continuous Facilitation in Dispute Resolution via Capacity Building: As no preclusion is made for future dialogue, the CTI’s Trade Policy Dialogue, the IAP Peer Review Sessions, as well as the bilateral consultation meetings under the APEC umbrella may well utilized as windows of opportunity to address issues of concern relevant to dispute mediation. APEC’s important role in facilitating transparency, dialogue, and confidence-building among member economies for advancing mutual benefits of trade and investment relations. For the two non-WTO economies, Russia and Viet Nam, a “fast-track” mediation system could be set up for dispute resolutions. APEC’s technical cooperation or capacity building should be utilized to strengthen member economy’s lack of training, expertise, and experience in arbitration.

(4.3) Cross-Sectoral Information Fertilization: All other existing APEC Fora may serve as focal points for advancing stake-holders’ interests in the
process of globalization. For instance, the issue of consumers’ confidence in e-commerce could be addressed in the Telecommunication Working Group; the ADR training could find its way in the Human Resource Development Working Group; Investment-related grievance could be addressed in the Investment Expert Group, etc. Dispute mediation remains relevant in the dynamic of globalization and in the interests of all stakeholders. The experts in dispute mediation could still find their ways in the various APEC existing fora and contribute in exchange of information, enhanced dialogue and dispute mediation.

(4.4) Building ADR into APEC Fora: In the pursuit of a feasibility study on an envisaged FTAAP, APEC could well make the Dispute Settlement provisions transparent, and seek ways to harmonize or integrate them into a mechanism applicable to all with a pathfinder approach. In the case of e-commerce mentioned earlier, there are ongoing discussion on how APEC could facilitate an ADR role for further policy cohesion. There may well be a relevant role for APEC to play and serve as a consultative forum before APEC members resort to the use of the WTO Dispute Settlement Mechanism, or other arbitration processes. For instance, the report of “2003 Study on Debt Collection Litigation/Arbitration in APEC Economies” suggests regional cooperation be accelerated by aggregating best practices for a better debt collection system and developing human resources, particularly personnel involved in alternative dispute resolution (ADR) procedures, such as mediation and arbitration. It also explores avenues for a region-wide ADR framework.

(4.5) Better Utilizing IAP Review as an ADR Mechanism: APEC could utilized the evolving and maturing IAP Peer Review process as a value-added ADR channel. Member economies could gather information from their business sector and inquire about the practical obstacles in doing business in other APEC member economies. By so doing, the business sector could address relevant concerns relevant to dispute resolution. Member economies could postulate questions with the expectation of thorough answers from the economy under review. The process could enhance mutual understanding with transparency, and the economy under review will manage further
improvement in order to build credibility under the peer review scheme.

(4.6) APEC as WTO Navigator: APEC could well serve as a navigator for the WTO on many issues of concern. Although APEC is nowhere prepared to reinvent the wheels of the WTO. APEC did not write itself completely off in the area of dispute mediation. APEC’s initiatives could make a maximum impact on liberalization; these includes orchestrating works towards the reductions of the exceptions to the agreed principles on national treatment and MFN; developing disciplines on incentive packages; preparing an inventory of remaining impediments so as to pressure economies on accelerating liberalization process; involving the business sector in shaping policy agenda and initiatives.¹⁰ New initiatives could still be entertained in various fora in addition to the CTI’s Trade Policy Forum. Should there be some APEC economies who despite or take it light-heartedly with the APEC non-binding principles, member economies could still decide to make a motion in fora other than APEC.

(4.7) APEC as an Integrator of Globalization and Localization: Mediation itself cannot narrow the cultural gaps among various member economies; it could lead to widening of cultural gaps and reinforcement of biases in processing, since the criteria used for mediation in different cultures are vague and fluid. Therefore, “a unification of standards or criteria has long been desired in cross-cultural dispute processing in order to enhance predictability, which is imperative for globalization of free market economies.”¹¹

Concluding Remarks

This discussion paper sets out to explore the notion of Alternative Dispute Resolution (ADR) and use APEC as a case study in terms of its past attempts in the area of dispute mediation, the eventual abandonment to the Working Group, the reservation on not to preclude the discussion on dispute

¹⁰Myrna S. Austria, “Investment Liberalization and Facilitation in the Asia Pacific: Can APEC Make a Difference?” (Philippines APEC Study Center Network Discussion Paper No. 2002-05.

mediation for the future, and the challenges for APEC ahead. For addressing and resolving trade and investment related disputes, WTO’s dispute settlement mechanism is by far the most powerful and effective channel. However, the institutional process of APEC marks a detachment from GATT/WTO’s binding and sanctionable approach, and manifests itself in the “concerted unilateral” approach with voluntary, non-binding and mutual beneficial principles. Among various type of ADR, APEC’s Individual Action Plan Peer Review facilitates the role of mediating potential disputes, among many other functions.

APEC’s past achievement in dispute mediation is remarkable in that designating a specific role to supplement WTO, ensuring transparency in dispute resolution mechanisms within each member economy with a database and designating a central contact point for business inquiries; and promoting dialogue and understanding, encouraging accession to international agreements and conventions, such as ICSID or the New York Convention. However, given APEC’s special modus operandi which originated in an anti-establishment sentiment against more rule-based underpinning in other international organizations, APEC seemed aloof to a more structured mode of dispute resolution, or a more formal approach to further enhancing APEC’s role in dispute mediation when it rid itself off the Expert Group altogether. This self-imposed sun-set clause may be welcome by all quarters with different reasons. Some do not wish to see APEC duplicating the well-functioning WTO roles, some do not see the need for addressing “disputes” as there are no binding rules in APEC, others do not wish to divert attention from other more urgent priorities, and still others do not see the need for spreading thin the already limited organizational resources, etc.

What remains though in APEC are many windows of opportunity for addressing relevant issues of concern, such as the Collective Action Plans orchestrated under each APEC Forum/Working Group, the Individual Action Plan Peer Review Process, and the bilateral consultation sessions. The Trade Policy Dialogue under the Committee of Trade and Investment also serves as a potential area for dispute mediation. Some task-specific, outcome-oriented ad hoc groups could also be established where necessary. Therefore APEC is not completely out of the loop in the function of dispute mediation after all.
In the wake of APEC reform, although the content of reform required may vary from one member economy to another, the streamlining of Working Groups by establishing sun-set clause should be congratulated, including APEC’s steadfast elimination of the Dispute Mediation Expert Group given the external and some precarious circumstances.

In addition to monitoring via peer pressure the pace of change in liberalization, APEC could well facilitate capacity building in dispute resolution, especially for those non-WTO members. APEC could continue to provide information with cross-sectoral fertilization and reinforcing the concerted efforts in achieving Bogor goals. APEC could build into the existing fora some ADR mechanism where member economies could discuss how best to manage disputes and resolve conflicts in a non-antagonistic way. APEC could further strengthen the IAP Peer Review Process and forge a remarkable mutual learning experience. APEC, as catalyst to WTO in many fronts, could continue to serve as WTO Navigator in steering the cause of due WTO process in dispute mediation. APEC, as pioneer, could harmonize cultural elements in dispute mediation, and advancing spirit of cooperation.

An organization is of no value if it cannot from time to time evaluate its current state of play and engineer its future course of reform or restructuring. APEC has been striving to do self-review with a strong sense of advancing organizational goals. Although it may not seem to the outside world that it should be more tough-handed, outcome-oriented, and rule-based, APEC needs to explore its future course of reform with the confine of incremental change and the courage of carrying on the torch in good faith. Any premature give-up on the APEC’s modus operanti not only could be a slap on the faces of APEC Leaders who have made the vision and charted the blueprints for implementation. It is the confidence-building and good-faith that will make APEC approach possible and plausible. APEC could certainly achieve more than where the current faith resides, including the area of dispute mediation.

As much as the legal, formal approach of dispute settlement is well regarded, the informal, less-confrontational approach of dispute mediation should be well tapped into, particularly in the construct of a new era of community building. With trick or treat, APEC should continue its organizational efforts in achieving the organizational goals--trade and
investment liberalization and facilitation as well as economic and technical cooperation. All these goals are to build a higher goals of advancing mutual benefits for all stakeholders and achieving peace and prosperity in the world. One essential ingredients to achieve all these goals, I believe, is to take seriously how we manage conflicts and mediate disputes in such a way that we remain partners in good faith. The art of mediation then remains to a lesson to be mastered.