

Regional Dispute Resolution Mechanism in South Asia Region for long term sustainable cross border power trade

Policy Brief

1. What is Dispute Resolution Mechanism?

A dispute mechanism is a structured process that addresses disputes or grievances that arise between two or more parties engaged in business, legal, or societal relationships. Dispute mechanisms are used in dispute resolution, and may incorporate conciliation, conflict resolution, mediation and negotiation. CBET involving a number of buyers and sellers will require such a mechanism

2. Why important, Key Issue/ problem in focus

Considering existing and future trade relationships between two countries, it is necessary to have Strong and clearly defined dispute resolution procedures. Repercussions of such disputes can lead to discontinuation of electricity supply temporarily or permanently, leading to high financial losses and demand-supply imbalance. Any dispute in Power trade has a significant financial impact on parties (Buyer and Seller). It is therefore important that there should be in place a transparent resolution mechanism for resolving disputes.

2. SARI/EI Research findings/ Summary/Analysis)

In South Asia, India has a well-established three tier dispute resolution procedures/mechanism. As per India's standard Power Purchase Agreement the parties are required to settle the disputes as per follows:

1. Amicable settlement: the parties to meet and settle the disputes amicably within a defined time period.
2. Dispute Resolution by Appropriate Commission viz. CERC OR SERC
3. Dispute Resolution by Appellate Tribunal: An independent body to resolve the grievances against the decision of the commissions.

Recently, Govt. of Bangladesh has also created Bangladesh Energy regulatory Commission Tribunal under Bangladesh Energy regulatory Commission to resolve the disputes.

3. Resolution by Arbitration:

The affected parties have also the recourse to opt for arbitration process for resolving disputes. For example, In India, Indian Arbitration and reconciliation act is in place for resolving disputes. As per the SAARC framework on Energy Cooperation signed with by the member countries in the year 2014, SAARC arbitration Council has been identified to resolve the disputes relating to electricity/energy among the South Asian Countries. Though this has been identified, however, in all the Contracts/PPAs signed subsequent to SAARC Energy cooperation agreement, the arbitration has been envisaged in third country viz. Singapore. As per the bilateral contracts/PPAs signed between India-Nepal, India-Bangladesh and India-Bhutan, disputes are to be resolved mutually and arbitration has been identified in third country viz. arbitration in Singapore. Presently, there is no case of arbitration on electricity

between India-Nepal; India-Bangladesh and India-Bhutan. The reason may be that trade volume is very small and also due to single buyer model in Nepal, Bhutan and Bangladesh. India is the only country where there are multiple buyers/sellers/traders etc. However, going forward when having multiple buyers and sellers in the south Asian Region with more private sector participation, a transparent dispute resolution mechanism will be critical.

As per the prevailing Power Purchase agreement signed between South Asian Countries, in case of any dispute with respect to CBET, there is two tier system of settlement of dispute:

An amicable settlement of such disputes by using dispute resolution procedures mentioned in their Contracts/PPAs. In case the dispute remains unresolved, settlement of disputes through Arbitration in third country OR through SAARC arbitration council, which is governed by SAARC arbitration rules.

Any arbitration proceedings in third country will lead to substantial financial impact on both the disputed parties. Member countries needs to build consensus and develop trust among themselves for referring the disputes to SAARC Arbitration council. Member countries can consider strengthening of the SAARC arbitration council OR any other alternative (instead of having in third country), which should be transparent and acceptable to all member countries and should be less expensive and time consuming.

4. Recommendations

Considering relationship between two countries, it is important to have clearly defined and standardized dispute resolution procedures for Cross Border Electricity Trade of electricity. It is therefore recommended that Present/existing practice of resolving disputes for CBET transactions be continued viz. as per follows:

- i) An amicable settlement of such disputes by using dispute resolution procedures mentioned in their Contracts/PPAs.
- ii) In case the dispute remains unresolved, settlement of disputes through Arbitration in third country OR through SAARC arbitration council, which is governed by SAARC arbitration rules.
- iii) Considering arbitration in third country will have huge financial impact, it is recommended that in the long term SAARC Arbitration Council be strengthened in a way that is acceptable to all member countries " after the word strengthened to resolve the electricity disputes.
- iv) While CBET is progressing currently among the BBIN countries, it may be practical to work on a dispute resolution mechanism for these countries.

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