



Happy  
Holidays



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**Project Director's Message**

Dear Readers,

At the outset, I would like to express my pleasure in presenting to you the current Issue of our WTO Cell Newsletter. Let me take this opportunity to congratulate the WTO Cell team of the Ministry for consistently putting out such wonderfully compiled information on various facets of the WTO and international trade matters with special focus on the concerns of the industrial sector through this print medium.

This Issue is sixth in line of a series of Newsletters that have gone before and have successfully dealt with issues both current and relevant to industry and trade. Having been a part of the policy arena of the government for the last many years now, I believe that effective dissemination of relevant information to the quarters concerned can make massive contributions towards the final implementation of any government policy. It works at both ends; helps and prepares the policy makers to understand the stakeholders' perspective while formulating the policy and also facilitates policy utilization by the target audience.

At this point in time, while the industrial stakeholders are bogged down by acute energy shortages; severe supply side constraints hold them down on one end and the ushering in of a new era of trade openness with India, the optimization of SAFTA and an ever rising wave of regional trade liberalization on the other, pragmatic solutions are required to face such formidable challenges. In this context, proper awareness and a clear understanding of issues at hand can go a long way in generating concrete and viable solutions.

For instance, it is significant that the stakeholders know about the trade remedies available to them to counter unfair trade practices likely to ensue in the process of liberalization and also have sufficient awareness of the inherent safety valves that can be used to help sustain them through turbulent phases. Where it is natural to lament the

energy problems being faced by the industry, a firm reason for pulling down growth and increasing production costs, a more balanced policy work would throw out some pragmatic suggestions and pointers towards possible solutions instead of consuming precious time and energy in finger pointing. This is where the role of information and awareness raising comes in.

Going through the previous Issues, I see that this objective has held sway. Many areas of significance have been successfully covered in detail including the trade remedy laws of the WTO, a tool if used intelligently can play the same part as trade barriers raised in the form of tariffs which are more visible and thus open to criticism. The post-MFN implications with India have also been taken up comprehensively. The last Issue was dedicated to Renewable Energy Sources to put forth the significance of alternative sources of energy for the industrial sector.

All such issues can be dilated upon to no end. But their depiction and proposed application to practical problems can reap multiple dividends for both the government and the private stakeholders. Hence, relevant information provided directly to the stakeholders has little substitutes. It has been felt that information gap can lead to misplaced fears. Simple solutions can sometimes take care of big problems. This leads me to stress that the smaller the steps the more focused the approach. I feel this principle is in dearth in many sectors. Most of the time, big results are achieved through small, calculated, well thought out and balanced steps in the right direction than one giant leap. Hence, the Newsletter's approach to highlight current issues faced by the industry in a simplified and focused manner, along with possible answers is encouraging and is hopefully continued.

The Issue at hand is dedicated to the 'dispute settlement mechanism' of the WTO. Alongside, it comments on the latest EU concessions as well. Hope that the readers gain from the insights provided in the various write ups presented in the Newsletter.

**Neelofur Hafeez**

Project Director & Joint Secretary  
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## DISPUTE SETTLEMENT MECHANISM

By Saifullah Khan (S.U. Khan Associates, Management Consultants)

Disputes are a natural outcome of trade, as on occasions a trading partner somehow fails to fulfill his obligations as agreed in an agreement. Hence, the need for a trade dispute settlement mechanism. Despite there being dispute settlement mechanisms at international and domestic levels (discussed in the following paragraphs), quite a large number

of trade disputes remain unresolved as the contesting parties prefer not to go to these forums because of involvement of higher costs. This gives rise to the need for the establishment of a dispute settlement mechanism at the domestic level, involving least cost and speedy disposal of disputes. To achieve this objective, it is proposed to establish a dispute settlement mechanism with the co-operation of FPCCI (Details given at the end).

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mechanism at the domestic level, involving least cost and speedy disposal of disputes. To achieve this objective, it is proposed to establish a dispute settlement mechanism with the co-operation of FPCCI (Details given at the end).

### A. WTO Dispute Settlement Mechanism

WTO dispute settlement proceeds through three main stages: consultation; formal litigation; and, if necessary, implementation. Disputes start with a request for consultations. The two sides are required to consult for 60 days with the goal of negotiating a mutually satisfactory solution to the dispute. If unsuccessful, this leads to the formal litigation stage. The complainant can request for formation of a panel. After making inquiry and giving all the parties an opportunity of being heard and make representations, the panel then circulates an "interim report," offering both sides an opportunity to comment and seek clarification. The complainant and respondent can still negotiate a settlement at this point. If the complainant and the respondent are unable to reach any settlement, the panel issues its final report which is then adopted by the WTO. However, one or both sides (but not the third parties) can appeal the panel's report in the Appellate Body (AB) of the WTO.



### B. Court of Arbitration by International Chamber of Commerce

Other remedy available at the international level is the Court of Arbitration for dispute settlement which is provided by International Chamber of Commerce (ICC). Under this dispute settlement mechanism, anyone can use ICC arbitration, whether a company, state, state entity, international organization or individual. The request for arbitration is sent to the ICC Secretariat at either Paris or Hong Kong office. Parties nominated as arbitrators are confirmed by the Court or Secretariat and place of Arbitration is set by the Court. Terms of Reference are set up and must be completed within 2 months. In the absence of an agreement between the parties as to the applicable rules of law, the Arbitral Tribunal applies the rules of law which it determines to be appropriate. After the proceedings, the Arbitral Tribunal draws up a draft "Award" which is submitted to the Court for scrutiny. Once approved, it is signed by the arbitrators.

### C. Arbitration Agreement for Settlement of Dispute in Pakistan

In Pakistan, the Arbitration Act provides for three classes of arbitration i.e. (i) Arbitration without Court intervention (ii) Arbitration where no suit is pending, (iii) Arbitration in suits (through Court).

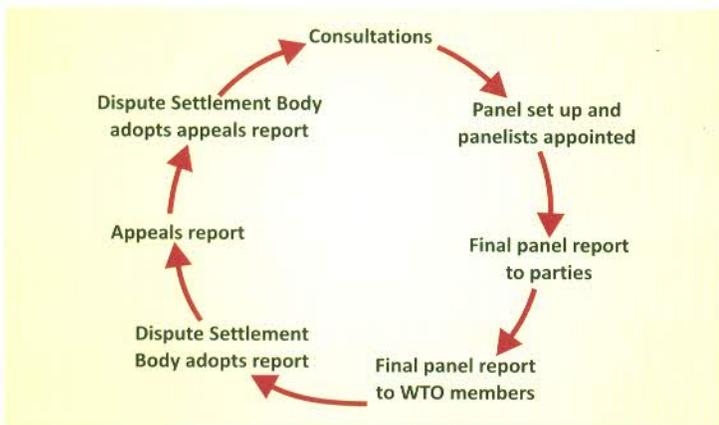
The Act also contains further provisions, common to all the three types of Arbitration Agreements. An arbitrator may be named in the arbitration agreement or may be left to be appointed by a designated authority. Where the arbitration agreement is silent about the mode of appointment of arbitrators and the parties cannot agree about the choice of the arbitrator, the Act gives power to the Court to make the appointment. The arbitrator has certain statutory powers, including the power to administer oaths to witnesses, power to "state a case" for the opinion of the Court etc. The award must be pronounced within the time limits laid down in the arbitration agreement or (failing such agreement), within 4 months of the commencement of hearing. The time limit can be extended by the Court in certain circumstances.

#### D. Proposed Dispute Settlement Mechanism without Intervention of Courts

At present in Pakistan there is no noteworthy dedicated trade dispute settlement mechanism in place which provides speedy settlement of disputes especially in case of international trade. In the absence of such a mechanism, there is trust deficit between various trading

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partners. Although sometimes fraudulent transactions are done by a few opportunists, yet it brings a bad name to most of the trading community of Pakistan. Although at the Government level, Commercial Courts are in place to resolve



trade disputes, yet the parties involved would not like to go to these Courts due to long process and lack of tangible results.

In the Free Trade Agreements with different countries, there is normally a provision and mechanism for dispute settlement. At present free trade with different countries is a specific percentage of the total trade volume. If for a nominal volume of total trade, a dispute settlement is considered necessary for smooth trading relationship, there is a definite need for a mechanism for resolution of disputes arising out of the remaining volume of trade; hence a compelling need for evolving a feasible trade dispute settlement mechanism. For amicable and timely resolution of such disputes, local representatives of Federation of Chambers of Commerce & Industry (FPCCI) can play an effective role in this regard. Therefore a key role will have to be played by the local representatives of FPCCI which may result in the following:

- i) No separate set up will be required to be made for this purpose.
- ii) The designated members of the FPCCI would be in a better position to fully understand the nature and implications of a dispute between both parties.

- iii) They can easily motivate the domestic party involved to come to an amicable solution
- iv) This will save time and effort of both the contesting parties. Sometimes both parties desire to solve the dispute, but are unable to do so due to time lag and other complications which do not allow the parties involved to get out of the dispute because of fines/demurrage charged by other authorities.

To achieve the above purposes, a special Disputes Settlement Cell (DSC) can be created at the local office of each Chamber of Commerce and Industry with two to three designated members for this purpose. This DSC may hear the case of the parties involved and can also take assistance of subject specialists of the FPCCI. A procedure can be prepared to entertain and process such cases for decisions to be made in a stipulated time period. In case the local party involved in the dispute does not abide by the decision of the DSC, a punitive action may be recommended to the Government, for example, blacklisting etc.

Additionally, the DSC may compile and publish its annual report to record its achievements and keep the members aware of the modus operandi of different frauds, if any come to their notice through these trade dispute cases. Once this mechanism becomes operational, embassies of various trading partners can be approached to request them for similar arrangements in their country to help sort out such trade disputes, resolution of which is in the common interest of all the trading partners.

Summary of some cases (Box at page 6) from the WTO Dispute Settlement Mechanism reveals how Pakistan benefitted from it especially when it's contesting / responding country was economically much stronger. With minimal share in the international market, a developing country like Pakistan can win a case against a giant like US in the WTO Dispute Settlement mechanism provided its stance is in accordance with the relevant WTO provisions



Dispute Settlement Panel of WTO

## Cases Related to Pakistan in the Dispute Settlement Mechanism (DSM) of WTO:

Pakistan was involved in various WTO dispute settlement cases as under:

- as a complainant in 3 cases;
- as a respondent in 2 cases, and
- as a third party in 9 cases

Summary of some cases in which Pakistan was involved is given in the following paragraphs which reveals that how Pakistan benefitted from the WTO Dispute Settlement Mechanism especially when its contesting / responding country was economically much stronger:

### i. United States – Import prohibition of Shrimp and Shrimp products from non-certified countries (that had not used a certain net in catching Shrimp) including Pakistan

In this case the panel/AB on November 06, 1998 concluded that US;

- Violated GATT Article XI (Prohibition on quantitative restrictions) as it did not put forward any defending arguments in this regard.
- Ban on imports of shrimps could not be justified under GATT Article XX (General exception – Exhaustible natural resources). AB held that the application of the matter was unjustifiably discriminately because of its intended and actual coercive effect on the specific policy decisions made by foreign governments that were members of WTO.

The above conclusion not only points towards the arguably justified restrictive measures but also reveals that had Pakistan not been member of WTO it could not have qualified such a relief which is not available to non-members of WTO.

### ii. United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan

In this case the Appellate Body (AB) on November 05, 2001 upheld the Panel's ultimate conclusion/finding that the United States (US) acted inconsistently with;

- Agreement on Textile and Clothing (ATC) Article 6.2, by excluding from the scope of the domestic industry captive production (meant for internal use) which was found to be directly competitive with yarn offered for sale on the open market.
- ATC Article 6.4, by failing to examine the effect of imports from Mexico individually when attributing serious damage to Pakistan.

The above decision of AB clearly reveals that a country like Pakistan which has minimal share in international market can win a case against a giant like US provided its stance is on merit in accordance with the relevant WTO agreement.

### iii. Egypt – Anti-dumping duties on matches from Pakistan

In this investigation, Egypt imposed definitive anti-dumping duties on imports of matches in boxes from Pakistan. So, Pakistan on February 21, 2005 requested for consultation to the Chairman of Dispute Settlement Body.

On 27 March 2006, the Governments of Pakistan and Egypt notified the Dispute Settlement Body that they have reached a mutually agreed solution to the matter raised by Pakistan. This solution was in the form of price undertaking agreements between the concerned Pakistani exporters and the Egyptian Investigating Authority.

Source: [www.wto.org](http://www.wto.org)