

GOVERNMENT OF PAKISTAN
MINISTRY OF COMMERCE
TRADE DISPUTE RESOLUTION ORGANIZATION

Report

**Brainstorming Session / Seminar on
“Revamping the Mechanism of Trade Dispute Resolution in Pakistan”**

Faisalabad - 28.5.15

Trade Dispute Resolution Organization (TDRO) organized a Brainstorming Session / Seminar on *Revamping the Mechanism of Trade Dispute Resolution in Pakistan* in collaboration with All Pakistan Bed sheet & Upholstery Manufacturers Association (APBUMA) at Faisalabad on 28th May 2015. More than 180 persons attended the seminar (list at Annex A).

2, The newly established department of Ministry of Commerce, TDRO was introduced by Ms. Roubina Taufiq Shah, Director General, who stated that TDRO was established as an attached department of Ministry of Commerce, under the Strategic Trade Policy Framework STPF 2012-15 for improvement in the image of Pakistan as a reliable trading partner. The mandate of TDRO is to take swift action for early resolution of trade disputes, act as a bridge between bodies responsible for standard and quality, establish a database of ‘High Risk’ places with high prevalence of disputes & frauds in international markets, improve quality standards, ensure that foreign importers are not cheated by Pakistani exporters, prepare database of exporters with confirmed cases of disputes, provide assistance to Pakistani exporter who are defrauded in international trade, and educate and train exporters and importers to avoid disputes. Ms. Shah informed the participants that TDRO is in the process of drafting a Trade Dispute Resolution Act, for which consultations are in process, and the objectives of this Seminar was to seek comments/views of the trade bodies about the present mechanism of trade dispute, shortcomings/loopholes/weaknesses in the current mechanism and suggestions for the new Act being formulated. The Director General TDRO stated that two Consultants have been hired for preparing the rules and regulations of TDRO. One Consultant will study the local issues and will give input accordingly. The Foreign Consultant will study foreign laws to harmonize the law of TDRO with the law of other country. She appealed to the private sector to come forward and give their honest opinion about the current system, weaknesses and suggestions for improving the same.

3. Another presentation was made on “International Commercial Contracts” by Mr. Saqib Jillani, Advocate from PRIME Institute Islamabad. Commercial contracts were defined by the speaker as sale transaction agreements made between parties from different countries. The importance of properly drafted commercial contracts was highlighted and emphasis was made to have Watertight International Commercial Contracts, which are necessary to secure the revenue stream, to circumvent ambiguity, to avoid costly litigation and exploitation, to avoid party from

resorting to dishonesty and to enhance credibility and long term value. He explained that the International Commercial contracts are in very bad order in Pakistan as they are shared by emails with no formal documentation or registration procedure in the country. He further elaborated the essential terms to be taken into account while executing a commercial contract, namely, description of goods, quantity of goods, inspection of goods, packaging, Mode and place of delivery, Price per unit and currency, payment conditions and Dispute resolution clause on the applicable law and body responsible for resolution . While discussing the process and mechanism of arbitration, he was of the view that consent of the parties to the dispute is a pre-condition to refer the dispute for arbitration.

4. The Chief Guest of the Seminar Syed Muhammad Asim, Ex- Chairman ,All Pakistan Bed sheets and Upholstery Manufacturers Association, while delivering his keynote Address appreciated the initiative of Ministry of Commerce for establishing department Trade Dispute Resolution Organization for swift resolution of trade disputes. Establishment of an alternative trade dispute resolution department was the long standing demand of the business community as TDAP Trade Dispute Section had failed to effectively resolve the disputes. Moreover, with the advent of WTO establishment of such a department is the need of the hour and interest of the country He further stated that establishment of TDRO will help improve the image of Pakistan as a reliable trading partner as well as source of best quality product. In the past, generally people were not as such aware of the resolution of trade disputes through TDAP, which became one of the reason for failure of TDAP on account of swift resolution of trade disputes, therefore it is advised that TDRO ought to conduct seminars/ symposia throughout the country to create awareness amongst the business community on its establishment as well as procedures to resolve disputes.

5. Barrister Vishal Shamsi, spoke on behalf of National Centre for Dispute Resolution (NCDR) on “Why do Businesses need Mediation?” She enlightened the participants on the importance of resolution of trade disputes through mediation, which is a low cost medium of resolution of trade disputes. She was further of the view that mediation is the best way of resolution of disputes owing to the fact that it is the path to a win -win situation for both the parties. While discussing the options, parties to the dispute may have, she was of the view that in case of negotiation and mediation maximum control lies with the parties while in case of arbitration and litigation, it shifts to external factors. The parties to the disputes should choose mediation as a mechanism for dispute resolution as not only all the information is kept confidential but it is also without prejudice, enhanced communication, cost and time saving, low risk and durable. The resolution of disputes through mediation does not cause the breakup of the business relation, rather helps to further strengthen it.

6. Mr. Muhammad Yasin, Corporate and Trade Advisor, Pakistan German Business Forum, made a presentation on “Weaknesses of Current Trade Dispute Resolution and their Solutions”. He defined dispute as a disagreement over the existence of a legal duty or right, or over the extent and kind of compensation that may be claimed by the injured party for a breach of such duty or right. The different ways and means to resolve the dispute through courts, appointment of experts, Trade dispute Ombudsman, mediation, conciliation and arbitration were discussed in detail by the

speaker. He further highlighted main features of Arbitration Act, 1940. The mechanism of resolution of disputes in Intellectual Property Organization, Tariff Commission, Competition Commission of Pakistan and Securities and Exchange Commission was also discussed. While highlighting the weaknesses of the current dispute resolution in Pakistan, he was of the view that, lack of regulatory framework, awareness, education, skills , weak enforcement, lack of commitment from stakeholders, uncooperative attitude of Commercial Attaches are the factors responsible for piling up of the trade disputes. To overcome the weaknesses, he was of the opinion that the proposed law should contain the provisions which could empower the organization to take swift actions as well as require the other organizations to cooperate in the resolution of trade disputes. He was further of the view that there should be proper registration of importers and exporters, Offices of commercial attaches be made vibrant as well as data on fraudulent exporters be prepared and shared with the Commercial missions abroad.

7. The Seminar was also addressed by Mr. Thusantha Wijemanna, Director General, SAARC Arbitration Council(SARCO), who gave an overview of the mandate and working of the council. He explained the mechanism of referring the dispute to the council as well as the time frame to resolve the disputes. He further enlightened the audiences about the process of enforcement of the award made by the council. SARCO was established by SAARC member states with the objective to resolve commercial , trade and investment disputes amongst the member states and their nationals. The Arbitration Centre established at the SARCO Secretariat Islamabad is fully equipped to conduct arbitration procedures. The governments of member states have appointed their arbitrators, who are specialists in their profession. The rules to govern arbitration at SARCO are based on UNCITRAL Model Law. The awards made by the SARCO are deemed to be Foreign Arbitral Award. The award made by SARCO can be implemented in the member states as all the states are signatory to New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards(1958).

8. Panelists from the private and public sector had been invited by TDRO including TDAP, State Bank of Pakistan, Federal Bureau of Revenue and Pakistan National Accreditation Council attended the brain storming session and took part in the panel discussion. During the question & answer session, a keen interest was shown by the business community who highlighted the importance of establishing a Trade Dispute Resolution office in the public sector. The following discussion ensued in the brainstorming session:

Views of participants:

1. Mr. Imran-uz-Zaman, Deputy Director, TDAP, Lahore informed the participants that the real issue regarding trade disputes is no response by the exporters against whom complaints are lodged by foreign importers. However, the genuine exporters mostly respond positively, but the fraudulent elements in disguise of exporter never respond. So, it is the need of the time to adopt a pro-active strategy by reviving the registration of exporters and importers. Furthermore, Commercial Courts dedicated to trade disputes must be established.

2. Mr. Asim an exporter of textile , suggested that while drafting the law of TDRO, suggestions from business community be given due consideration so that its implementation could be ensured in letter and spirit.
3. Mr. Bilal from M/s. A.B.M. Textiles, Faisalabad suggested that the mechanism of TDRO must be strong and vibrant enough to deal with the disputes and suggested that Singapore model on Alternative Dispute Resolution Mechanism may be considered for this purpose. He further suggested that the officers working in the department and responsible for resolution of disputes through mediation and arbitration be trained enough on the international best practices in these fields.
4. Mr. Arif Ihsan of M/s. Ghani Textiles, Faisalabad opined that Trade Missions abroad must be activated for resolving the issues of Pakistani exporters. He was of the view that generally the response of the trade missions abroad had been very poor and uncooperative. Moreover, trade missions do not have correct and up to date commercial intelligence about their country of postings. He cited the issue faced by him personally while calling the container back from the country of export to Pakistan.
5. Mr. Muhammad Rizwan of M/s. Faisal Mustafa, Faisalabad suggested that provisions be kept in the law to deal with the courier companies as some times their documents are misplaced by these companies. He also made a reference to issue of container call back in African countries.
6. The Director, M/s. Lovely International, Faisalabad complained about the attitude of the State Bank of Pakistan in cases of trade disputes where the foreign importer does not remit the money on time (Bangladesh) and the bank penalizes the exporter. Mr. Zahid Iqbal, State Bank of Pakistan, Faisalabad responded to the issue raised and said that there is an adjudicating authority in SBP which handles such cases individually. In case of genuineness of the case waiver is granted. The other representative of SBP Karachi informed regarding un-authenticated messages from Bangladesh Banks, can never happen in bank to bank communication. However, he requested the exporters to send the case to SBP.DG TDRO also requested the representative of SBP to take up the issue of stuck-up money in Sudan
7. Mr. Ahmad Shahzad, M/s. Ahmed Weaving, Faisalabad, complained about the behavior of Customs and ANF authorities while opening the containers for checking. During this process they tear the cartons and destroy the packing resultantly the goods are often rejected by the importers. All the exporters, present in the seminar seconded the opinion of Mr. Ahmad Shahzad. They suggested that since TDAP is the only organization for promotion of exports, so this organization must be involved in order to get rid of the losses inflicted by Customs and ANF authorities.
8. Mr. Allahwala of FPCCI stated that the government of Pakistan should not only blame the exporters about default or fraud , they should also look into the matters of stuck up payments of exporters where the foreign counterparts have created the disputes. Moreover, foreign businessmen are also responsible for disputes in most of the cases therefore TDRO should also look into resolving the problems of Pakistani exporters.

9. Mr Zahid Khan, an exporter complained about the payments stuck in Russia for the past sometime and no organization looking after its release. He informed that the textile sector of Faisalabad has been hit very badly due to these issues. DG TDRO advised them to send the case to TDRO through the chamber or association for taking up the matter with Pakistan's Mission in Moscow and its swift resolution. Another exporter expressed that there is similar issue with Mexican importers. He was also advised to send the case to TDRO.
10. Mr. Asim, M/s. Z.A. Industry, Faisalabad pointed out the following issues:
 - i) The name of black sheep exporters/importers should be circulated amongst Chambers and Associations.
 - ii) Issue of transfer of export proceeds from Bangladesh due to lack of bank links.

The Director General, TDRO responded that the data base of fraudulent element is being prepared and will be placed at the website of TDRO as well as will be circulated among chambers and associations. Moreover, names of the fraudulent exporters/importers will be shared with TDAP with the request not to entertain them in the foreign as well local exhibitions.

11. DG TDRO requested Director General, SAARC Arbitration Council to suggest how he can help in the resolution of financial disputes involving Pakistani businessmen . He suggested regarding the case relating to Bangladesh Banks, that it should be taken up through the Ministry of Finance, Islamabad and then Ministry of Finance may send the cases to SAARC Secretariat for resolution.

Conclusion

Winding up the seminar, DG, TDRO appreciated the efforts of APBUMA for co-organizing the seminar. She stated that it has been a good exercise to consult the exporters / importers directly as it has given an insight of the real issues which they face. The inputs/ suggestions of business community will be given due consideration while drafting the trade dispute resolution law.

The participants of the seminar belonged to various fields mostly from the textile industry back ground including exporters, importers, lawyers, mediators, arbitrators, Members of Chambers of Commerce and Industries and relevant government functionaries from TDAP, SBP, FBR, SECP, Business Studies Departments of Universities.

The lunch arrangements were nicely made and costs duly shared by the APBUMA and TDRO. A Press Release had been developed and was widely circulated among the media persons. Coverage of the seminar is placed at Annex B. Photography was made the Association. Pictures of the seminar at Annex C.
