

**Ministry Of Commerce**  
**Trade Dispute Resolution Organization (TDRO)**

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

**Islamabad – 11.6.15**

Trade Dispute Resolution Organization (TDRO) organized a Brainstorming Session / Seminar on *Revamping the Mechanism of Trade Dispute Resolution in Pakistan* in collaboration with Rawalpindi Chamber of Commerce & Industry at Aiwan-e-Quaid, Islamabad on 11<sup>th</sup> June 2015. More than 80 persons from various public and private sectors attended the seminar ( list at Annex A).

2. The objectives of this event was to seek the inputs of all the stakeholders. The event featured different perspectives of the trade activities, issues in trade, workings of trade bodies, role of chambers of commerce, and the functioning of different stakeholders during the seminar. Representatives from the chambers of commerce, traders (exporters/imports), legal bodies, embassies, government servants, bankers, mediators, arbitrators etc. were the participants of the said event. The seminar provided a great opportunity of understanding the issues which arise during the trading process. Participants not only gave reasonable recommendations for the minimization of these issues but they also suggested different measures for the promotion of trade in Pakistan. Following are the issues and recommendations which were highlighted in the seminar.

3. In his welcoming remarks Mr. Asad Mashadi, President Rawalpindi Chamber of Commerce and Industry emphasized that there is a limited role of our foreign Missions in trade related affairs as they do not assist traders in different issues. While appreciating the establishment of TDRO, he noted that there was a need of such type of central body for addressing trade related issues and he assured that the chambers of commerce should work with TDRO in bringing foreign investment in Pakistan. He highlighted the efforts of RCCI in promoting the Pakistani businesses worldwide through many initiatives of the Chamber such as Made in Pakistan Exhibition, Rawal Shopping Festival etc. According to him, RCCI has around 5000 members who report number of national and international disputes, which RCCI resolve with limited role as a mediator, especially in case of international disputes. He appreciated the efforts of TDRO as an exclusive body for dispute resolution. He emphasized that all exporters and importers must register with the regulatory authority and get updated information on international trade. The businesses in Pakistan face various issues such as shipment of poor quality products especially from China, lack of awareness regarding legal procedures for international trade, limited support from High Commission abroad and lack of information regarding registered companies. He stressed that TDRO should institute dissemination program to educate and train business community. For effective trade dispute law, he suggested that instruction be given Pakistani businesses to secure payments, forming a complete mechanism for ensuring the quality and quantity of goods, a proper procedure on legal cover should be defined and to safeguard the legal rights of the businessmen, a set template of the legal requirements/ Agreement for specific countries must be provided to the businessmen.

4. While presenting his keynote address, the Chief Guest of the session, Mr. Aszar Ali Choudary, Additional Secretary Ministry of Commerce stated that Trade Dispute Resolution is a core subject of modern day international trade. To this end TDRO was established by Ministry of Commerce as an attached department, with a given mandate for an early resolution of trade disputes in Pakistan and thus improving the image of Pakistan as a reliable trading partner. He emphasized that the department was created on a long outstanding demand of Pakistan's trade missions abroad and our business community. Pakistan trade has increased manifold over the years, end result being that many trade disputes have arisen with its increase. Pakistan has good relations with its trading partners all over the world which we would like to maintain. Having a strong mechanism in place for resolving trade disputes, is therefore the need of the hour. These disputes between the business communities spoil the image of the country and bear a huge mark on the investment climate of the country. With a long list of cases and workload in both upper and lower courts of the country and expensive litigation in foreign courts, devising a comprehensive and empowered mechanism of trade dispute resolution is essential for enhancing trade of the country.

5. Mr. Choudhury informed that the Ministry of Commerce is keenly monitoring the performance of TDRO who have been given special directions to put in place a workable and internationally acceptable law. The officers of the department have already started working to this end in a two-pronged strategy; one by analyzing and handling the trade disputes being received from both Pakistan and abroad and two by collecting inputs/ expert opinions for the upcoming draft Trade Dispute Resolution Act. TDRO is therefore seeking the views of all stakeholders including the public and private sectors, and today's effort is part of the program. He appreciated TDRO for organizing these brainstorming sessions all over Pakistan, inspite of so many constraints. He hoped that these sessions will provide tangible solutions for improvement in the current system and a way forward which would be included in the draft law, if found appropriate. He requested all the participants and the panalists to be forthcoming in giving their views and suggestions, which will go a long way in contributing towards drafting of law for the enhancement of Pakistan's trade and improving Pakistan's image as a reliable trading partner.

6. Ms. Roubina Taufiq Shah Director General TDRO, gave a brief introduction of TDRO and its mandate. She 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. She pointed out that the traders sometimes indulged in fraudulent / unethical practices by taking the advance payments and not delivering the consignments. She presented a report of TDRO according to which 16% of the disputes are based on non-payments, 11% poor quality, 12% due to non-shipment, and 9% due to non-compliance. While explaining the role of judicial system she informed that it lacks in terms of timely and efficient resolution of disputes. Due to Complexities in litigation system, the investors do not desire to follow the procedure. Litigation process is time consuming and commercial judges are not acquainted with the trade procedures and issues. Businesses have to face 5-10 year litigation process due to which a tremendous amount of cases are pending in the courts. Analyses of survey was conducted during the seminar concluded that 75% of the participants are aware of the current Trade dispute mechanism but majority of them are not satisfied with it. Ms. Roubina also revealed that in case of any dispute the foreign importers/exporters sometimes revert to their own courts and Pakistani exporters/importers have no awareness or funds to follow their cases in courts of other countries. Therefore, TDRO is demanding certain revolving funds to tackle such cases.

6. Muhammad Awais Khan, program officer, International Trade Center (ITC) Pakistan, discussed the role of technical assistance in advancing alternate dispute resolution (ADR) mechanism. He stated that both mediation and arbitration are more suitable than other dispute resolution options. In both systems, parties have control over the outcomes, time frame and costs. However he indicated that we do not have many certified arbitrators and mediators. Mr. Khan further stated that Pakistan is facing constraints in terms of legal, institutional, human and financial resources due to which we do not have the capacity to implement laws which are internationally harmonized. He informed that ITC provide technical assistance in determination of legal gaps and on the basis of these gaps, laws can be developed which support arbitration and mediation systems. While defining the role of ITC, Mr. Khan said that ITC can certify the mediators and can also assist the government in creating awareness among the general public for alternative trade resolution mechanisms. ITC can also be helpful in the regional networking of professional mediators and litigators. Mr. Khan informed the participants that ITC is also assisting TDRO in drafting the law and for this purpose, ITC have local and international consultants. He indicated that Pakistani court laws are binding within Pakistan i.e. our laws are not internationally harmonized.

7. Mr. Ali Salman, founder and Executive Director PRIME Institute, specified the consequences of weak contract enforcement regime by Pakistani businesses. He was of the view that business registration process is complex and time consuming due to which there are huge time delays. Contract enforcement requires 46 procedures and is time consuming also (it takes almost 976 days) due to which it costs 23.8% of the total value of claim. Due to lack of awareness and skills business contracts are not properly articulated. Without any confirmation, the traders takes orders online and most of the time there is no such clause of dispute settlements in contracts. In some cases even prices are not mentioned clearly. In order to minimize all these issues Mr. Salman recommended that there should be an efficient business registration system which can facilitate the businessmen and it should focus on the minimization of time delays and transaction costs. An efficient contract enforcement mechanism is very much helpful in gaining the confidence and trust of the investors. Contract enforcement systems must not be ignored and should be designed properly so that it can guide the investors in the establishment of formal contracts. The e-filing system can be introduced for the timely enforcement of contracts. There should be a freedom of contract because in the absence of such freedom market economy cannot flourish.

8. In his presentation, Mr. Malik Imran Ahmad, Deputy Director SAARC Arbitration Council explained that arbitration is a mechanism for the settlement of disputes. It is consensual and it leads to a final and binding determination of the rights and obligations of the parties. While explaining the benefits of arbitration in the settlement of disputes, he also stated that arbitration is time saving and cost effective. It ensures the confidentiality and its decisions are binding upon the disputants. He introduced SAARC arbitration council and stated that its objective is to accelerate growth in the region. In order to accelerate the economic growth it is very much important to enhance across border trade, for which strengthening the mental trust is very much important. To achieve this, SAARC standing committee has established an independent dispute settlement mechanism for the SAARC countries i.e. SAARC Arbitration Council (SAARCO) in 2006. He informed the audience that Pakistan is the permanent host of this council. He revealed that a legal framework for arbitration in the region is there in the form of domestic arbitration laws, and the agreement for establishment of SAARC arbitration council

provides the legal framework at the regional level. He said that SAARCO looks for the arbitration agreement in all the contracts that are made between parties. This arbitration agreement can be in the form of arbitration clause in any document, verbal agreement or in the form of a separate comprehensive independent agreement. He stated that SAARC also encourages people, who are doing business across the borders, to include the model clause of SAARCO in their agreements so that SAARCO can proceed in a case when dispute arises. This clause says that disputes would be settled on the basis of SAARC Arbitration Rules which is in force at present. He was of the view that SAARCO recommended number of arbitrators, appointing authority, seat of arbitration, language of the proceedings and substantive law should also be included in the arbitration agreement. In defining the importance of SAARCO he stated that it is a specialized body which is endorsed by all SAARC member states. Eminent local arbitrators are available and parties are free to choose their own arbitrators. Its services are available to government agencies, private companies and individuals and the disputes are concluded within 6-12 months.

9. Mr. Isfandyar Ali Khan, Barrister at Law, vice-president (KPK) Pakistan Mediators Associations, emphasized the challenges and opportunities in institutionalizing mediation in trade bodies and chambers of commerce. He said that there is misconceptions regarding mediation and people perceive it as ineffective as the decision under arbitration is not binding. However, the advantage of mediation process that it allows the parties to negotiate the mutually acceptable outcome which if accepted, can provide the parties a chance to enter into future contracts as well. But, trade bodies have to establish a mechanism for the elimination of trust deficit due to which foreign investors have issues regarding the neutrality of Pakistani mediators. Based on all these things, Mr. Khan endorsed that the mediation is preferable upon arbitration and litigation. However, if the mediation is failed in the settlement of disputes then in that case one has to go for arbitration and litigation. He recommended that state agencies must establish a business friendly mechanism of arbitration and litigation. In this context he suggested that capacity building initiatives should be taken and there should be certification programs for mediators and arbitrators.

10. Mr. Anwar Mansoor Khan, Vice President National Centre for Dispute Resolution (NCDR), said that the alternative dispute resolution is practiced all over the world. However, in Pakistan it is not been able to get support from the trade bodies or the public in general. He stressed that there is a need of cost/time effective dispute settlement system and it requires the institutionalization of alternative dispute resolution mechanism. He also highlighted that our judicial system lacks in terms of providing timely solutions of the disputes and most of cases remain pending for number of years. He also emphasized that the ADR results in the early settlement of dispute due to which pre dispute relationship between parties can be maintained. Mr. Khan suggested that alternative dispute resolution should be legislated into a structured system and he stated that it is the objective of NCDR to make a structured legal judicial system which is helpful in gaining the trust of the foreign investors. He informed the audience that the mediators registered by NCDR are trained by leading institutes and it has developed its own training modules. While discussing the performance of NCDR he stated that the success rate of mediation is almost 73% and NCDR has released more than US\$ 36.5 million under different

disputes which are mediated. He said that the NCDR has also introduced arbitration, as part of alternate dispute resolution, and for this purpose it has made its own Arbitration Rules. He also emphasized that business community should incorporate the process of ADR in contracts to further support the system.

11. Mr. Khalid Hidayat, Director General TDAP pointed out that a problem of attitude on the part of Pakistani exporters i.e. they do not care about trade disputes and are reluctant in resolving them. He supported the idea that trade bodies should establish a mechanism for the elimination of trade disputes resulting in trust deficit. He also recommended that the law of TDRO should be devised in such a way that it can give a clear explanation regarding the practicality of arbitration and mediation.

12. Mr. Shumail Dawood, former President Rawalpindi Chamber of Commerce, argued that most of the complaints are from importers. Nobody is attending to them and they are unable to find any channel for the settlement of disputes. He opined that this matter is now a challenge for TDRO as to how create awareness among the business community. He recommended that technology should be introduced in dispute resolution organizations and the system should not be fully dependent upon human capacity. He stated that TDRO has to devise a mechanism for its outreach programme.

11. In the open house brainstorming session a Pakistani trader raised some real and important issues:

- The traders are exposed to risk of exchange rate differential. In some cases, the dispute arises due to difference in cost at the time agreement is signed and payment. There is no clause added to the contract in case such dispute happens.
- There is no mechanism for the authentication of importers/exporters and due to lack of check and balance the defaulting traders again come in to the market with new names.
- He pointed out that the customs staff carelessly handle consignments at the port and they do not have proper equipment for this purpose. He wondered as to who is responsible for the shipment's destruction?

12. While addressing his questions Mr. Khalid Hidayat, Director General TDAP, proposed that in such disputes, traders should file a complaint against custom officers or he can also ask the Chinese exporter for remuneration. He suggested that mediation cannot work when both the parties have already decided not to resolve the dispute i.e. for mediation we have to change our attitude.

13. Mr. Sanaullah Abro, Additional Director Customs, added that there are misconceptions regarding the supply chain and our traders are unclear about the role/duties of custom officers, clearing agents and the port staff and for removing these misconceptions the system should be transparent and clear. While answering the question regarding pre-shipment consignment, he informed that customs is not responsible for opening the goods, they only inspect the goods under the law. Unloading and loading of the container is also not the responsibility of customs they just inform the trader that the customs is going to inspect their consignment. Mr. Abro stated that after reaching the ports, the goods come under the responsibility of port authorities and the clearing agents are responsible for getting inspection done. He claimed that the agent is the representative of importer and exporter and all the equipment and labor is managed by that

clearing agent. He recommended that traders have to be clear on the role of all the authorities so they can properly file a complaint against the concerned authority.

14. In order to avoid pre shipment destruction of the consignments at the ports, Mr. Anwar Mansoor Khan (Vice President NCDR) also advised that for both exporters and importers, consignments should be inspected by customs before loading and a custom seal should be placed on it showing 'goods inspected'.

15. Mr. Azhar Iqbal, Deputy Director, Pakistan National Arbitration Council recommended that traders should use the services of accredited inspection bodies which are recognized by a third body. Based on their competency PNAC has accredited four inspection bodies. He suggested that the PNAC link on Ministry of Commerce's website may be seen which contains the details of certified inspection bodies.

16. Mr. Javaid, a Pakistani exporter, argued that there is only a lack of awareness and training among the exporters/importers, otherwise if documents are properly submitted, no agency puts any hurdles. He recommended that capacity building initiatives should be undertaken, there should be training and certification programs for mediators/arbitrators. TDRO should start awareness campaigns which can be helpful in educating our traders. For the elimination of smuggling, he recommended that the duty structure in Pakistan should be reviewed. Mr. Javaid also suggested that in order to avoid pre shipment destruction of consignments, companies should maintain a proper staff and should not be dependent totally on the clearing agents.

17. Muhammad Arif Solangi, Manager legal services cell SMEDA pointed out that one of the major problems with Pakistani exporters is the improper designing of contracts. He therefore suggested that traders should visit SMEDA's website where they find sample contract agreements, and export/import policies. He also recommended that businesses can send their queries (regarding starting and doing business) to SMEDA which will be responded to. Ms. Roubina added that TDRO has signed an MOU with PRIME institute for making a template of a contract on internationally acceptable standard.

18. Participants of the seminar also pointed out that due to Non-registration and ignorance of the intellectual property rights, the trading partners use the similar trademarks and therefore it is possible that the other country can block fake exporters. Sometimes the domestic traders use same trademarks due to which exports are blocked at the local ports. Mr. Asfand Ali, Deputy Director Intellectual Property Organization Pakistan, recommended that in order to avoid time delays in business registration, Pakistan customs should have a place at ports for business registration. He also recommended that traders must make their intellectual property profiles. In the same context, Mr. Khalid Hidayat, Director General, TDAP suggested that while trading with the trademark, one has to consider that whether some other company/individual is using the same trade mark or not? If someone is using the similar trade mark and our traders have not considered it, then it is possible that they will be blocked by the host country. Another way of avoiding such type of hurdles is through the registration of companies in those countries where our trade partners are located.

19. Mr. Murtaza, representing AJK Chamber of Commerce suggested that in the establishment of such type of organizations and laws, all stake holders should be engaged in the mechanism. Private sector must not be ignored and there should be a private public partnership in such issues.

20. More inputs from the participants are as follows :

- There should be a complete mechanism for quality related issues. This type of mechanism can be based on quality certifications.
- As it is claimed that the clearing agents do not work properly therefore in order to avoid disputes, trade bodies should certify clearing agents the services of which can be utilized by the business community.
- Existing legislation system needs a detailed review for effective, out of court settlements and it is recommended that the reforms should be made in the legislation system, particularly for the business related affairs. Commercial courts should be introduced and Judges should be appointed who are specialized in commercial cases. “Our Laws should be internationally harmonized which requires networking on regional basis. Advanced technology should be brought in the litigation process (Korea’s e-court experience can be taken as a case study for this purpose).
- Pakistani High Commissions abroad and foreign agencies in our country should work together for timely resolution of trade disputes.

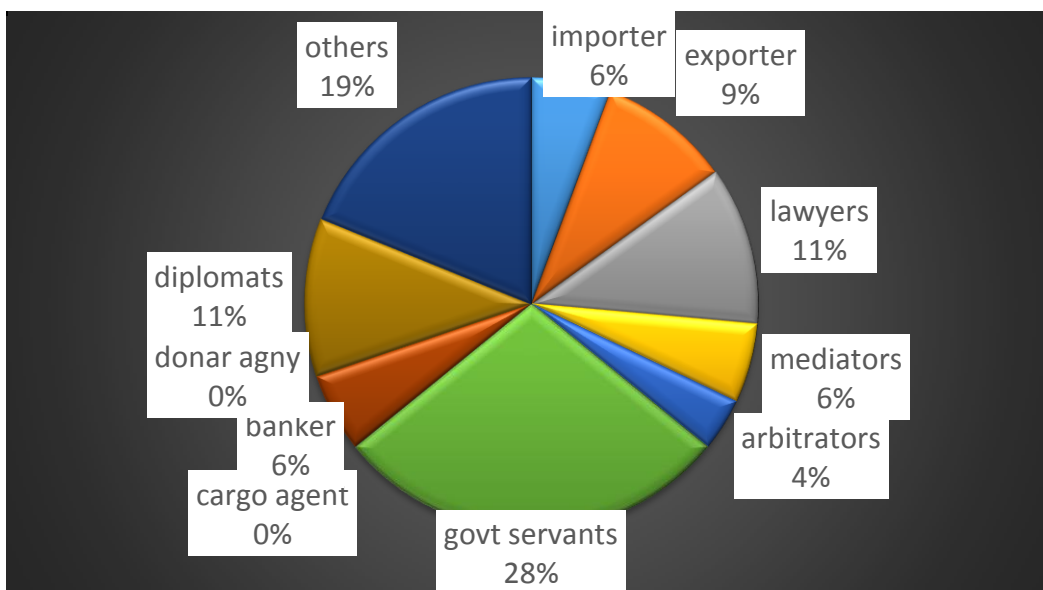
21. The representatives of foreign embassies based in Islamabad like India, Turkey, China, Sudan, Brazil, Mauritius, Iran etc also participated in the brainstorming session and appreciated the formation of a new department and its awareness programmes.

22. Winding up the seminar, DG, TDRO appreciated the efforts of RCCI for co-organizing the seminar. Ms. Shah said that TDRO will incorporate the inputs of all the stakeholders in the drafting of Trade Dispute Resolution Law and for this purpose TDRO will also conduct similar type of seminars in collaboration with other chambers of commerce. 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 and The inputs/ suggestions of business community will be given due consideration. In her ending remarks DG, TDRO gratefully acknowledged the participation of all the speakers, panelists, diplomats and other participants in the said event.

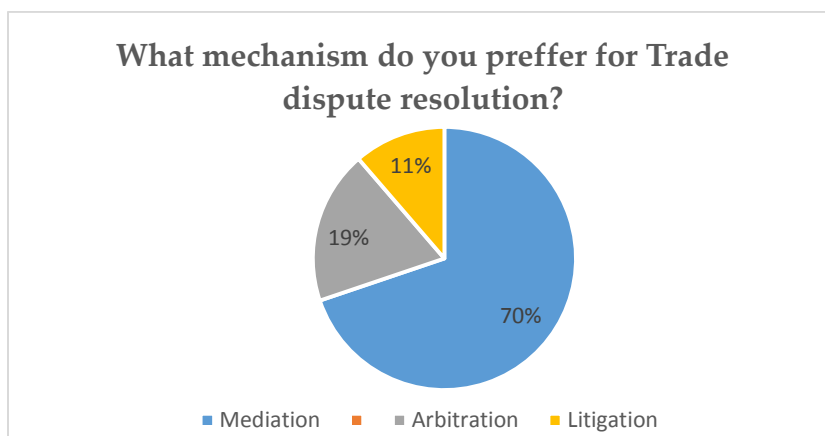
23. To incorporate the detailed feedback of the participants, a form was also circulated. The analysis of the responses from participants is given in Annexure II. The participants of the seminar belonged to various fields including exporters, importers, diplomats, lawyers, mediators, arbitrators, bankers, Members of Chambers of Commerce and Industries and relevant government functionaries from TDAP, FBR, IPO, EDB, Women Chambers etc.

### Feedback from Participants

The purpose of this event was to seek the inputs of all the stakeholders. The event featured different perspectives of the trade activities. Trade disputes and their resolution, working of trade bodies, role of chambers of commerce, and the functioning of different stakeholders in the acceleration and facilitation of trade in Pakistan was highlighted during the seminar. Representatives from the chambers of commerce, traders (exporters/importers), legal bodies, embassies, relevant government functionaries from TDAP, FBR, SECP, bankers, mediators, arbitrators etc. were the participants of the said event. Among all these participant majority of them were government servants (28%) followed by small number of exporters and importers i.e. 9% and 6% respectively. There were also diplomats (11%), lawyers (11%), mediators (6%) and arbitrators (4%). However, there was no cargo agent and representative from donor organizations.

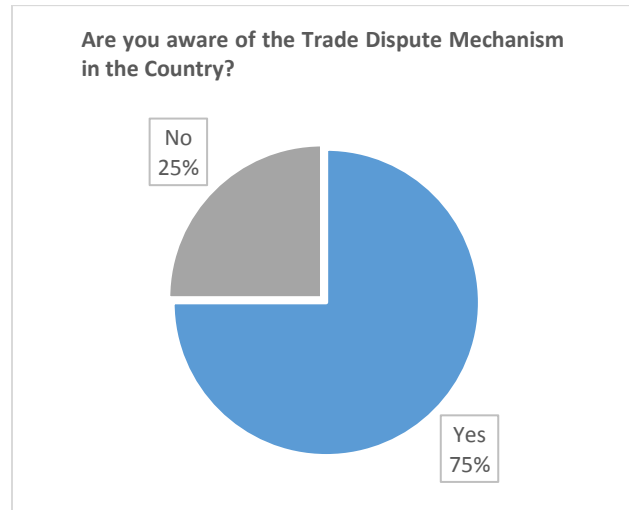
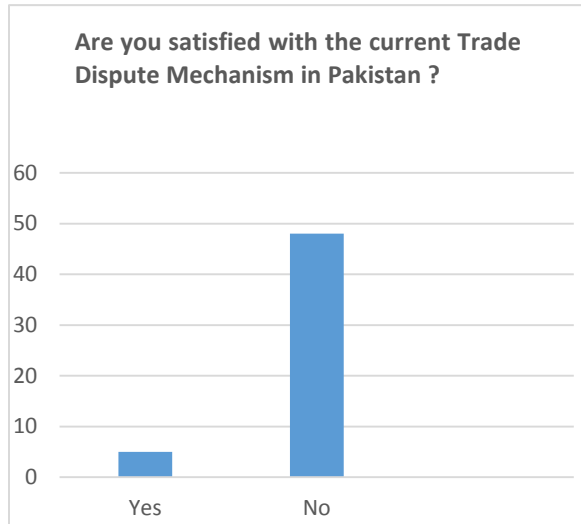


The feedback from the participants indicated that the majority of them (70%) preferred the mediation process followed by arbitration (19%) and only few prefer litigation (11%). Thus, it supports the view that there is an eminent need of certified mediators and arbitrators.

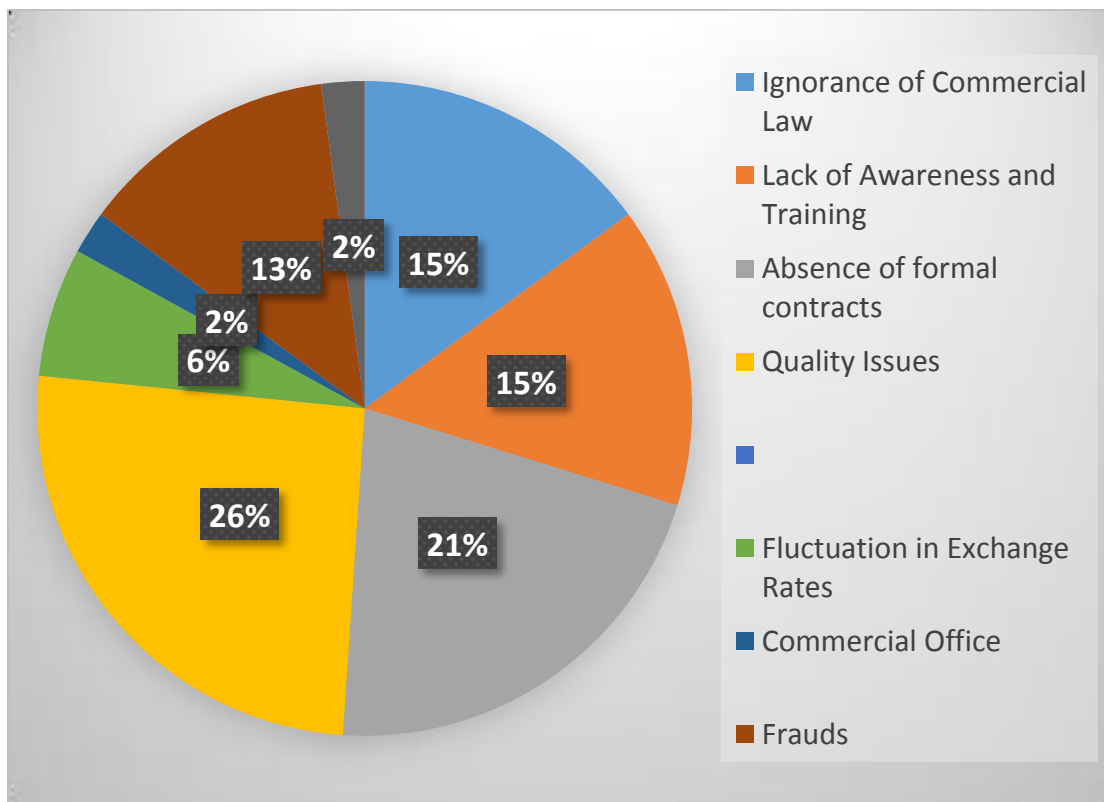




On the basis of the feedback from the audience it can be concluded that 75% of the participants were aware of the current trade dispute mechanism and only 25% of them do not know about the mechanism in the country. However, majority of them were not satisfied with the current trade dispute mechanism in Pakistan.



**Main reasons of trade disputes:** The participants gave the biggest reason for disputes to quality issues with 26%, while absence of contracts was rated the second biggest cause of disputes.



The feedback also revealed that most of the participants viewed TDAP as an organization which looks after disputes in Pakistan followed by Ministry of Commerce, Commercial Courts and

Chambers of Commerce. Only few of the participants know about the SAARCO which looks after the arbitration agreements and provides the legal framework in the region.

