



**Survey Report**  
**on**  
**INTERNATIONAL TRADE DISPUTE RESOLUTION**  
**MECHANISM**

(Based on feedback by Pakistan Missions Abroad)



Prepared by  
**Trade Dispute Resolution Organization**  
Ministry of Commerce, Government of Pakistan  
&  
**PRIME Institute, Islamabad**  
2015

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Secondly I would also like to thank all TDRO Officers and Staff for working diligently and with dedication in spite of all odds in getting the feedback. Special thanks is due to PRIME Institute for analyzing the huge data in a report form in a short time.

Roubina Taufiq Shah  
Director General  
Trade Dispute Resolution Organization

**Trade Dispute Resolution Organization**  
**Government of Pakistan**  
**Ministry of Commerce**  
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## Preface

Commercial disputes between traders are rarely thought of as a barrier to international trade expansion. And yet, a great many medium-sized and small companies find themselves in trouble when they have disagreements with their customers or their sources of supply in other countries of the world and must think in terms of law suits or losses or both. When barriers to international trade are discussed, those that are usually thought of are high tariffs, customs red tape, foreign exchange controls, trade discriminations, restrictive cartel practices, and other regulations and curbs, governmental and private, which add to the normal difficulties of trade among nations (Arbitration in the settlement of international trade disputes by Rosenthal\*).

The mandate of resolution of trade dispute of international nature has been a subject of Ministry of Commerce since 1962. Commercial Courts were established under section 5A of the (Imports and Exports Control) Act, 1950 (xxxix of 1950) to decide the disputes as a last course. However, the resolution of trade disputes through Commercial Courts has not only been cumbersome but also did not prove effective, which ultimately resulted in the decline of level of trust of foreign importer. As per a study of Ministry of Commerce, constraints to business development in Pakistan occur due to delays in commercial dispute settlement, a major impediment to private sector growth. Businesses face 5-10 year litigation processes with 47 procedures. Reportedly over 1 million cases backlogged in courts (of which 30% are estimated to be commercial). Estimated 90 % of cases go to trial. Judicial system in Pakistan hinders dispute resolution process, and there is shortage of judges with heavy case-loads.

Ineffective mechanism has not only badly tarnished the image of Pakistan amongst the international business circles but also discouraged the emergence of Pakistan as a destination for investment and trustworthy import source. There is no administrative mechanism in place, therefore Pakistan is facing challenges on account of poor standards, image as a low quality producer of goods and least emphasis on resolving trade disputes by the concerned quarters.

According to World Bank Doing Business Report 2012, contract enforcement in Pakistan requires 46 procedures, takes 976 days and costs 23.8% of the value of the claim. Globally, Pakistan stands at 154 in the ranking of 183 economies on the ease of enforcing contracts. Pakistan's global standing in contract enforcement is said to be serving as a disincentive to investments and is discouraging foreign investors and traders from investing in Pakistan.

To overcome the shortcomings in the dispute resolution mechanism, and to revamp the present system, establishment of Trade Dispute Resolution Organization (TDRO) was approved initially under Strategic Trade Policy Framework (STPF) 2006-2007. The organization however could not be established during the initial years. The Strategic Trade Policy Framework (STPF) 2012-15 again provided for the establishment of the Trade Dispute Resolution Organization (TDRO) as an attached department of Ministry of Commerce. The department was established in 2014.

Trade Dispute Resolution Law and Rules to conduct the function of the organization shall be drafted in consultation with the chambers of commerce & industry, trade associations, trade offices abroad and international organizations. In this context, a survey was carried out by TDRO in the start of 2015, where views of Pakistan Trade offices abroad were sought regarding available trade disputes mechanism in their country of posting, frequency of disputes and suggestions for the new law being drafted. The feedback given by the Pakistan Missions abroad has been compiled in this Report for further reference.

Roubina Taufiq Shah  
Director General

# Survey Report on INTERNATIONAL TRADE DISPUTE RESOLUTION MECHANISM

## Introduction

Commercial relationship between Pakistani firms and their foreign counter-part firms is hampered by complex contractual disputes, as evident from complaints received in Pakistani embassies and consulates. These disputes badly affect the environment of trust between business partners, discourages investment in Pakistan and reflect poorly on business climate in Pakistan. They ultimately lead to a loss of earnings for Pakistani firms, thus leading to reduction in trade flows.

Trade Dispute Resolution Organisation has been established as an attached department of Ministry of Commerce in 2014 under Strategic Trade Policy Framework 2012-15 to resolve international commercial disputes. The mandate of TDRO is as follows:

1. Take a swift action for early resolution of trade disputes
2. Act as a bridge between bodies responsible for standard and quality
3. Establish a database of 'High Risk' places with high prevalence of disputes & frauds in international markets
4. Improve quality standards
5. Ensure that foreign importers are not cheated by Pakistani exporters
6. Prepare database of exporters with confirmed cases of disputes
7. Provide assistance to Pakistani exporter who are defrauded in international trade, and
8. Educate and train exporters and importers to avoid disputes

In 2014, TDRO initiated a consultation process by engaging with Pakistan's trade missions to understand the nature and reasons of commercial disputes between Pakistani and foreign firms. All 145 Trade Missions were requested to provide information such as total number of trade disputes; types of disputes, the process of dispute resolution in respective countries, law governing such dispute resolution mechanisms in relevant countries, the success stories of Missions and suggestion to improve trade dispute resolution mechanism in Pakistan. Following report is based on the analysis of responses received from 60 trade missions out of a total of 145 trade missions working abroad. These responses were received in hard copy, via email and via fax.

This report has been prepared by PRIME Institute, under a MoU between the TDRO and PRIME Institute, as PRIME Institute is implementing its project "Making Pakistan a Trusted Business Partner" with the support from Atlas Network. It is a joint intellectual property of PRIME Institute and TDRO.

## Analysis

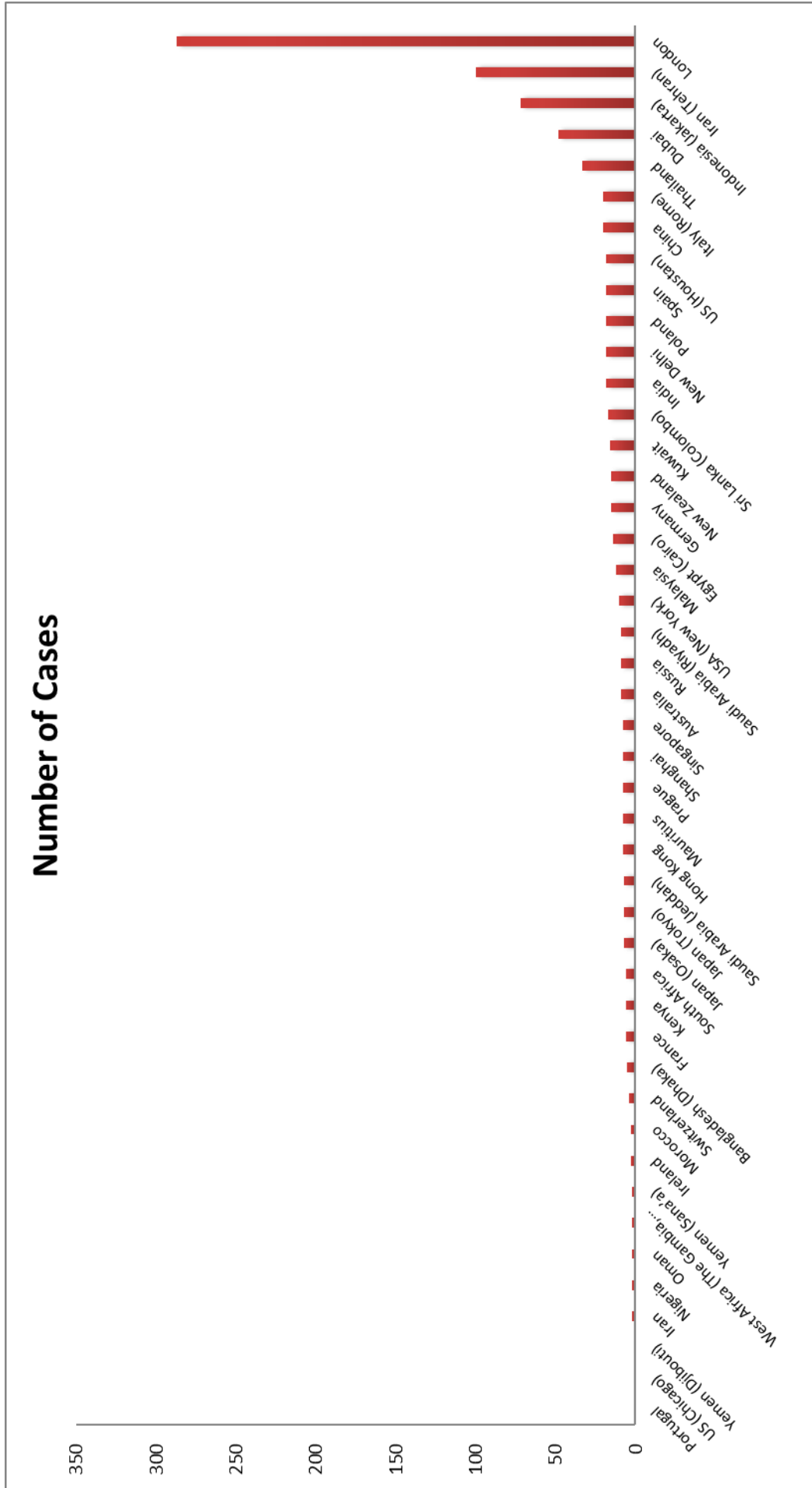
The report is based on the responses received from Pakistani trade missions. It contains information on number of disputes, reason and nature of disputes, origin of complaint, process of dispute resolution in other countries as carried out by Pakistani missions, selected success stories, rules and legal framework of dispute resolution in other countries, recommendations made by respondents for TDRO and TDAP, and suggestions for a new 'Trade Dispute Law' for Pakistan. The analysis has certain data limitations due to lack of uniformity of responses from missions in terms of frequency and time period of disputes.

### Number of Cases

The data showed that highest number of reported disputes is recorded in UK, London (887), followed by Iran (100). The lowest cases of trade disputes are reported by Portugal, Yemen and Sudan. Many countries such as Algeria, Serbia, Tanzania, Turkmenistan and Tajikistan informed that there were no trade disputes. The reason is mostly low volume of bilateral trade between these countries and Pakistan.

The graphical representations (Figure. 1) indicate that most Trade Missions have trade dispute in the range of 7-15, followed by 1-6 cases and then few have more than 16 cases. Out of 60 respondents, only three countries mention more than 50 cases. (For details, see Annexure I.)

Figure 1: Number of trade disputes cases filed in each country





## Reasons for Trade Dispute

Based on the responses, the nature and reasons for most of the trade disputes can be classified under these categories: non-payment, poor quality, non-compliance, bankruptcy/insolvency, delay/no shipments, and others. (See fig. 4)

### Non-payment

Most of the cases pertaining to payment issues involved non-refund/non-recovery of advance payments, partial payments or no payment at all after receiving the consignment from both Pakistani and foreign firms. Most of the disputes involve small amounts and are under US \$100,000 such as \$3,000 to \$72,000 (cases filed in Sri Lanka), \$5,000 to \$20,000 (cases in Indonesia) etc.

#### Success Story (Morocco) Amount: \$39,000

**Dispute:** Moroccan Firm did not make the payment of \$33,000 to a Pakistani Firm after receiving the goods. A complaint was filed with commercial section which helped mediate both the parties and resolved the issue.

### Non-shipments/Delayed shipments:

Second major reported reason for trade disputes is non-shipment of consignments. In Spain, 83% of the cases fall under this category. Similarly, delay in shipments is reported as one of the main reasons for trade disputes. In some cases, the shipment is delayed up to six months (a case filed in Saudi Arabia).

### Poor Quality

With respect to the quality of goods, most of the cases are filed in case of faulty product, damaged samples or non-conformance to international quality standards.

### Non-compliance

Most of the complaints related to non-compliance filed in cases where there are variations in ordered product and received product or discrepancy in specification of the consignments.

### Bankruptcy/Insolvency

Many cases were filed where the company filed bankruptcy and unable to make payment to the other party.

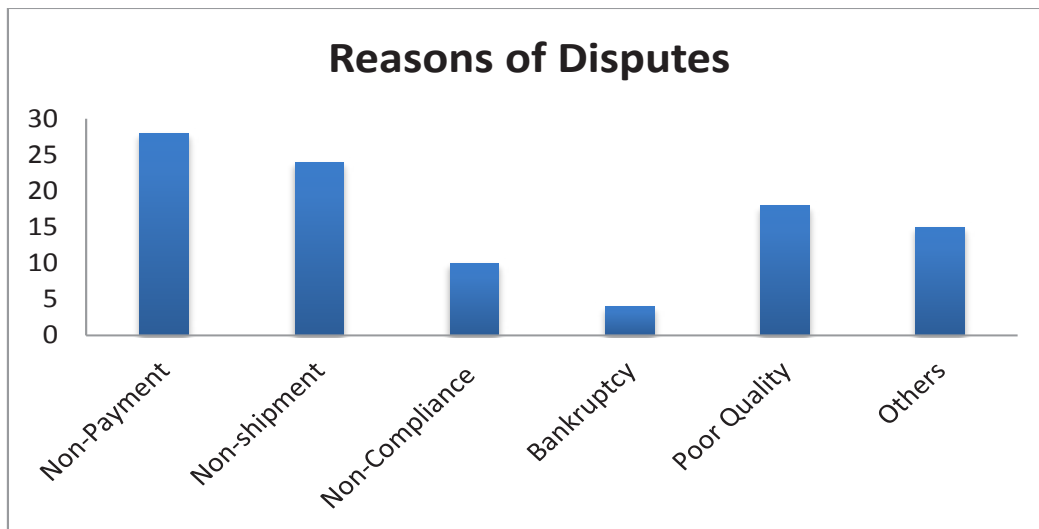
### Others

Some other reasons, as per the responses of Missions, include but not limited to absence of proper banking channel (Iran), cyber-crimes, contract with fake firms (Indonesia) etc. Similarly, in few countries such as Afghanistan, the major reason for disputes is related to IPR and/or trademarks.

*"The Establishment of TDRO is indeed, a remarkable step in the right direction towards implementation of STPF 2012-2015. We acknowledge that the objectives of TDRO are constructively supporting the overall trade and business activities, both locally and abroad."*

**Tajammul Altaf**  
Ambassador  
Embassy of Pakistan  
Prague

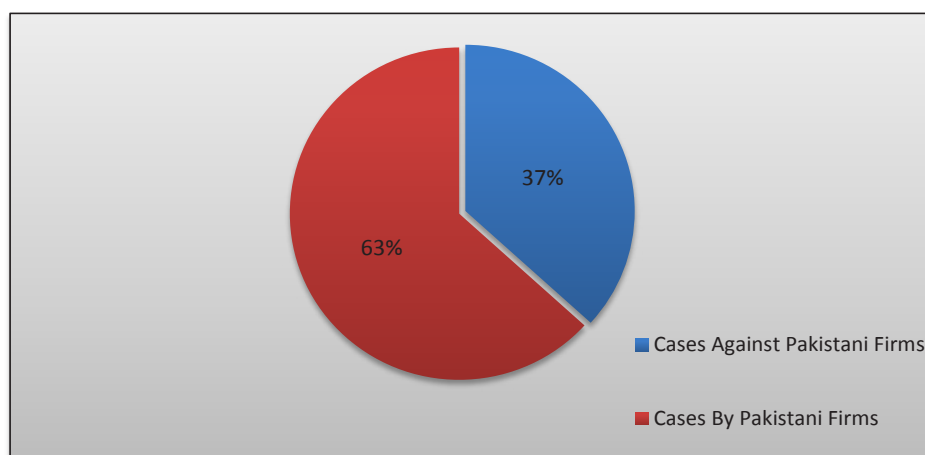
**Figure 2: Reasons/Nature of Trade Disputes**



**Pakistan vs others; Others vs. Pakistan**

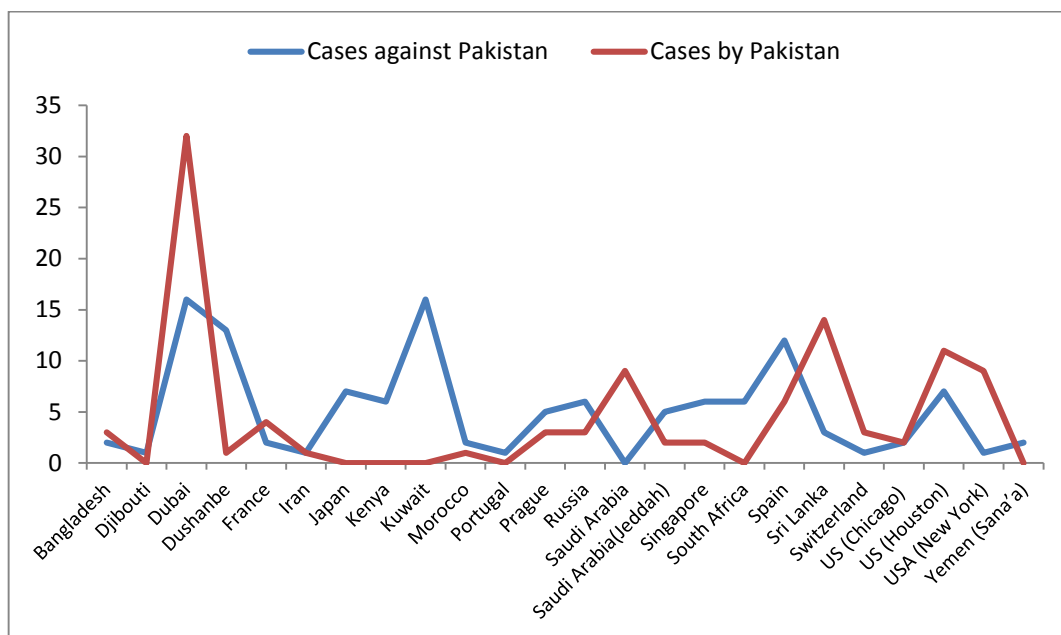
According to the responses, the number of cases by Pakistani firms seems to be more than the cases filed against Pakistani firms by foreign firms (See Figure.3). However, this number may have been skewed due to proportionately higher number of complaints concentrated in United Kingdom that is showing possibly an accumulated number. The Pakistani mission in London reported that there were 287 cases against Pakistani firms whereas Pakistani firms filed 600 cases against UK importers. If this is considered as an outlier<sup>1</sup>, then the complaints are nearly equally distributed. In another case, in Dubai, of total 48 cases 32 were against Dubai based firms. On the other hand, countries like South Africa filed all the complaints against Pakistan (6 cases). (For details, see Figure.4 and Annexure II).

**Figure 3: Total cases against Pakistani firms vs. Total cases by Pakistani firms (Selected Counties)**



<sup>1</sup> This data is over last 10 years.

Figure 4: Cases against Pakistan vs. Cases by Pakistan (Selected Countries)



### Process of Dispute Resolution

The trade dispute resolution process initiated mostly through filing a complaint with the relevant Mission. The Missions initially negotiate, consult and investigate on their own to resolve the issues. In cases where consultation does not work, the cases are referred to relevant authorities in each country. For instance, a Pakistani firm exported machinery to a Saudi firm for which payment against invoice was not made. Commercial Section, Saudi Arabia approached the relevant Chamber of Commerce & Industry. Chamber informed that the importer is not responding and the case may be filed in court of law. On the request of the Pakistani exporter, commercial section verified the shipment document and issued a letter to local lawyer in Saudi Arabia to file the case with Board of Grievances.

In Pakistan, most of the cases are sent to TDAP and Chambers of Commerce. As per the responses, most of the cases sent to TDAP are still pending and very few are resolved. Take for instance, US Mission in Chicago received two complaints against Pakistani firms which they referred to TDAP and both are pending. Mission in Singapore received six cases against Pakistani firms in 2013-2014. All the cases were referred to

*“The Establishment of TDRO is a welcome step and is greatly appreciated. Commercial Officers abroad have always highlighted the need of such a Central Organisation in the Ministry of Commerce.”*

**Asif Saeed Khan**  
Commercial Counsellor  
USA (New York)

**Success Story (Iran)**

**Amount:** USD 100,000

**Resolved:** Through Consultation

**Dispute:** A case was filed against Pakistani Exporter for recovery of payments. The exporter was unable to ship the product in time. After consultation meetings with both the parties, the case was resolved. Rather than recovery of the payment more order was placed with Pakistani company with increased time.

TDAP and either the response is awaited or no response was received. Similar status can be observed in South Africa, Prague, Yemen etc. Similarly, Chambers of Commerce also indicated limited success in resolving the issues. Some of the cases reported to be resolved by TDAP include a case from Hong Kong, Egypt and few others.

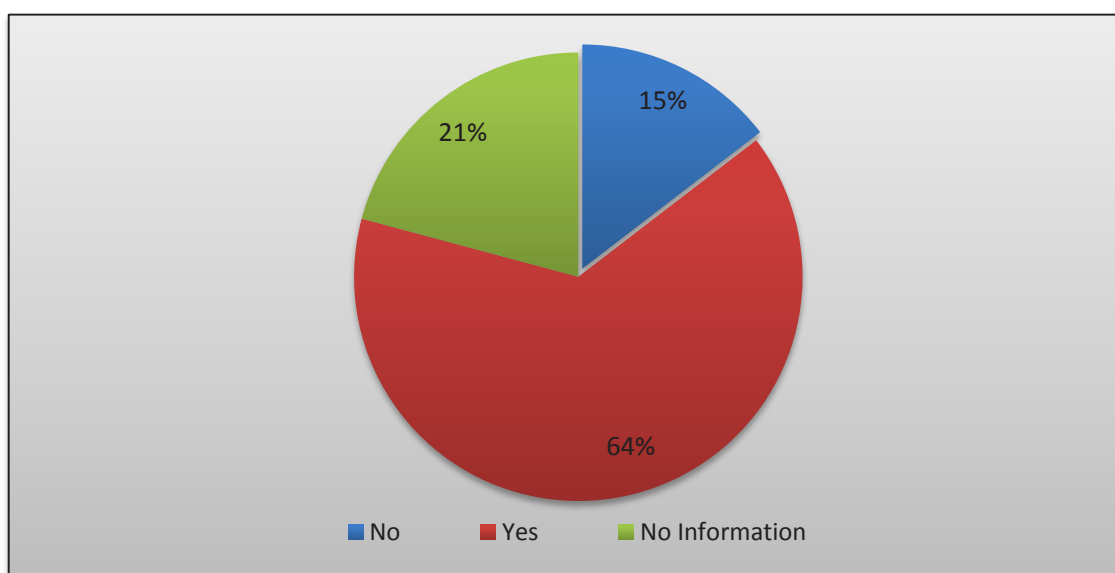
According to the responses, the numbers of resolved cases are very few and most of the cases are pending with the relevant authority for which the responses are awaited. Take for instance, cases in China (Beijing) are sent to Mediation Centre (which has 46 branches) set-up under Law Department of China Council for the Promotion of International Trade. It is reported that the response from CCPIT is very sluggish.

## Rules and Legal Framework of Dispute Resolution

Legal process exists in each country for dispute resolution. However, the court procedures are lengthy and time consuming similar to the process in Pakistan. Out-of-court methods for dispute resolutions mostly include arbitration, mediation, negotiation and personal meetings with the parties etc.

Most of the countries have *arbitration laws/acts*, and very few have *mediation law/acts* such as Austria and Serbia. Mediation usually comes under alternate dispute resolution mechanism that a party can opt for. Arbitration law/rules allowed many countries to resolve issues more effectively. Take for instance the case of Austria, where arbitration law allowed the country to resolve many disputes. Vienna International Arbitral Centre of the Austrian Federal Economic Chamber has successfully administered more than 1,600 arbitral proceeding since 1975.

**Figure 5: Designated Office/Authority for Dispute Resolution in Foreign Countries**



The responses from countries indicate that there is a huge variation with respect to dispute resolution mechanism in different countries. The countries have difference offices/authorities dealing with such disputes. It includes chambers of commerce, special cell/centres set-up under relevant ministries, tribunals, associations etc. (See Figure 5)

A significant number of countries are either a member of United Nations Centre for International Law (UNCITRAL) and/or modelled their dispute resolution mechanism based on UNCITRAL Model, which allows the progressive harmonization and unification of the law of international trade.

In addition, few countries are signatory of 1985 New York Convention, a part of UNCITRAL, which provide common legislative standards for the recognition of the arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards.

*“While this Mission highly appreciates TDRO’s initiative, it would like to convey a very negative feedback regarding follow-up and eventual resolution of all the legitimate trade disputes by concerned Pakistani authorities.”*

*Dr. Irfan Yusuf Shami  
Ambassador  
Embassy of Pakistan  
Republic of Yemen*

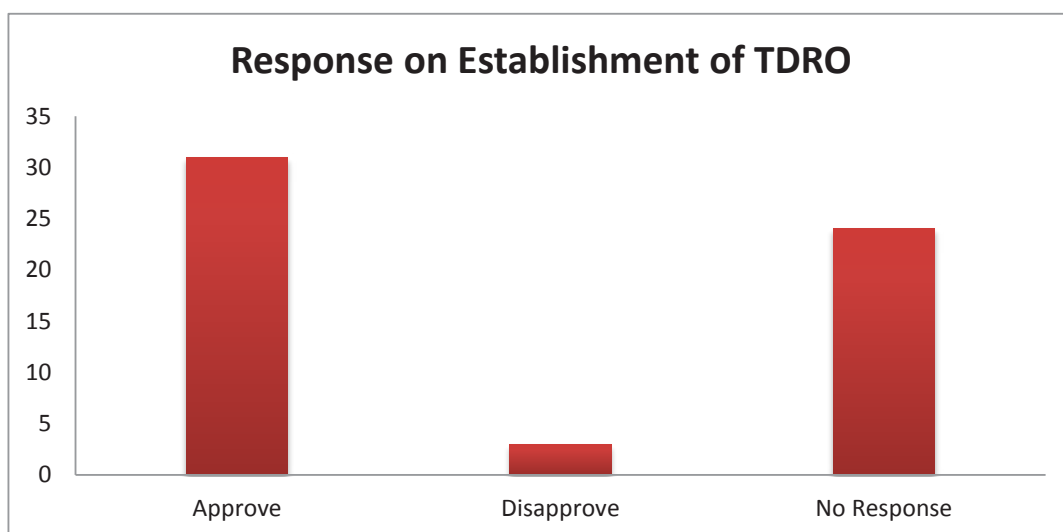
Some of the responses indicate that few countries are in the process of reforming in arbitration rules and act and also considering harmonising them with international laws.

## Recommendations

### For TDAP & TDRO

- Assist chambers of commerce in educating their members to improve quality of contracts with clarity on enforceable terms and condition.
- All parties should be informed about mutual rights and obligations.
- There must be an online database and complaint registration process where users can at any time update themselves with the rankings and status of the firms and any existing complaint.
- To safeguard Pakistani business, a specific clause on Trade Dispute Resolution Mechanism to be inserted in Bilateral Investment Treaties with relevant government
- The role of TDRO should be made pivotal and may be termed as focal office for sending disputes
- TDRO to provide alternative dispute resolution such as Mediation, Negotiation, Conciliation and Binding opinion in accordance with Rule of Procedure
- TDRO may devise some SoPs for commercial sections to handle cases on IPR, which are legally criminal in nature and outside scope of mediation and arbitration
- Monthly meetings involving TDAP, Customs, Chambers, trade bodies and other related organizations would help.

**Figure 5: Responses of Missions on Establishment of TDRO**



- The Ministry of Commerce/TDAP may develop a program to facilitate Pakistani exporters to file such cases in courts in foreign jurisdictions.
- Educate Pakistani exporters in their dealings with foreign private firms and provide them information on local laws.
- Trade and investment arrangements must contain suitable clauses to protect the legitimate interests of the Pakistani businesses in foreign countries.
- A mechanism to actively pursue course of resolution of trade dispute in foreign countries through Pakistan’s Mission, expert opinion to the Mission and communication with Pakistan-based firms for compliance of trade laws be devised.

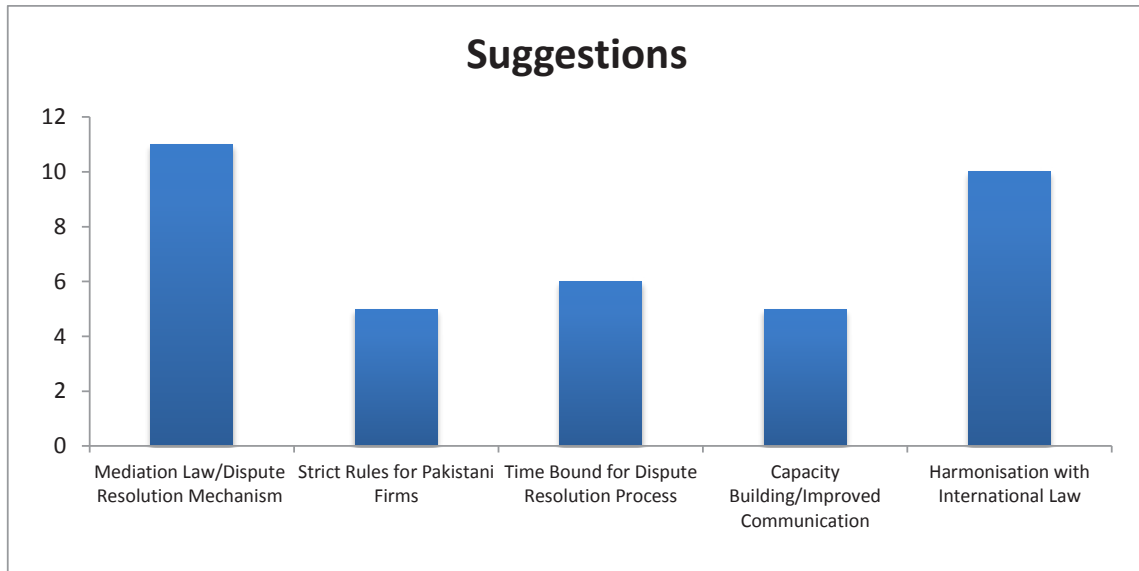
**For Trade Dispute Law**

- Dispute Resolution mechanism in Pakistan needs to be developed, where models of Arbitration Foundation of South Africa, UNCITRAL, American Arbitration Association (AAA) or Hong Kong International Arbitration Centre Model can be considered.
- Decisions should be manifestly impartial and should conform to principles of justice and fairness and the decision makers should be independent and should have no conflict of interest.
- Arbitration award should be final, binding and confidential.
- The procedure, cost and duration of Alternate Dispute Resolution should be clear in advance.

*“The set-up of such trade dispute mechanism will foster a climate of confidence for Companies involved in trade from and to Pakistan.”*

**Teepu M. Khan**  
*Head of Delegation*  
*Geneva*

**Figure 6: Suggestions from Missions on TDRO Law**



- Mediation and Arbitration laws are useful and effective if supported by an enforcement mechanism and have some deterrence on the party at fault so the defaulter should be legally bound to pay the disputed amount.
- The procedure for Arbitration process must follow a strict time framework.
- Some funds should be at disposal of commercial sections for engaging legal counsels/lawyers.
- A robust and efficient Trade Dispute Resolution Mechanism may be constituted including Mediating Law
  - Identification of parties
  - Description of the goods
  - Delivery periods and conditions
  - Inspection of goods
  - Quantity and quality variations allowed
  - Reservation of title and passing of property rights
  - Transfer of risk
  - Warranties
  - Force major clause

*“The Establishment of TDRO under STPF 2012-15 will prove a landmark decision to provide a forum (one window and swift) and facilitate the traders in swift resolution of the trade disputes.”*

*Dr. Saeed Qadir Mangi  
Commercial Counsellor  
Dubai & Northern Emirates*

- Requirement amendments only in writing
  - General sales/purchase conditions applicable
  - Choice of law (language)
  - Choice of dispute resolution mechanism
- In order to avail of arbitration as a method of dispute resolution, an arbitration clause should be included in any commercial contract. The clause should specifically provide for which country's law will govern the conduct of the arbitration or will be substantive law for arbitration.
  - The proposed law must contain the penal clauses and enforcement mechanism within Pakistan.

*"It is suggested that the system adopted by EU, China, Australia and South Asian countries may be studied and suitably modified keeping in view our own environment."*

*Major Gen. (Rtd.) Ulfat Hussain,  
HI (M), SI(M)  
Mauritius*

## Conclusion

The above exercise carried out by TDRO is not in vein, although views of many Missions could not be received on time and included in the analyses. The information obtained is a wealth of knowledge and experiences by the concerned quarters, which will help the organization make laws to be drafted on international standards and acceptable to the business community. These laws would also be harmonized with the international laws and regulations of the countries with whom we have agreements and /or frequent trade disputes. Exhaustive brain storming sessions with trade bodies are also underway which will refine the proposals further. The draft Trade Dispute Resolution Act will be shared with the Missions abroad before it is placed before the parliament for approval and enactment. Ultimately, the objective to improve the image of Pakistan is achievable if a formal body / organization like Trade Dispute Resolution Organization manages to draft the law and implement it in letter and spirit.



## Annexure I

Countries	No. of Cases	Reasons for Disputes					
		Non-Payments	Non-Shipment	Non-Compliance	Bankruptcy	Poor Quality	Others
Afghanistan	0						1
Algeria	0						
Australia	9	1	1			1	
Austria (Vienna)	0	1				1	
Bangladesh (Dhaka)	5	1	1				
Brunei	0						
China	20			1			
Dubai	48						
Dushanbe	0						
Egypt (Cairo)	14	1				1	
France	6	1				1	1
Germany	15	1	1		1	1	
Hong Kong	8	1		1		1	
India	18			1			
Indonesia (Jakarta)	72	1			1		1
Iran	2			1			1
Iran (Tehran)	100	1	1				1
Iraq	0						
Ireland	3	1	1				
Italy (Rome)	20	1	1				1
Japan (Osaka)	7	1	1			1	1
Japan (Tokyo)	7	1	1				1
Kenya	6	1	1				
Kuwait	16	1				1	1
London	287	1		1			1
Malaysia	12				1		
Maldives	0						
Mauritius	8		1	1		1	
Morocco	3	1				1	1
New Delhi	18		1	1		1	
New Zealand	15	1				1	
Nigeria	2						1
North Africa (Algeria)	0						
North Korea	0						
Oman	2	1	1				
Poland	18	1	1			1	
Portugal	1	1					
Prague	8						
Russia	9		1		1		
Saudi Arabia (Jeddah)	7	1	1	1			

Saudi Arabia (Riyadh)	9	1					
Senegal (Dakar)	0						
Serbia	0						
Shanghai	8		1				1
Singapore	8	1	1				
South Africa	6	1				1	
Spain	18	1	1				
Sri Lanka (Colombo)	17						
Sudan	0						
Switzerland	4		1				
Syria	0						
Tanzania	0						
Thailand	33						
Turkmenistan	0						
US (Chicago)	1	1	1	1	0	0	0
US (Houston)	18		1	1		1	1
USA (New York)	10	1	1			1	1
West Africa (The Gambia, Sierra Leone, Guinea Bissau, Guinea Conakry, Cabo Verde)	2					1	
Yemen (Djibouti)	1		1				
Yemen (Sana'a)	2		1			1	
Total		28	24	10	4	18	15

Annexure II <sup>2</sup>

Countries	Cases Against Pakistan	Cases By Pakistan
Bangladesh	2	3
Djibouti	1	0
Dubai	16	32
Dushanbe	13	1
France	2	4
Iran	1	1
Japan	7	0
Kenya	6	0
Kuwait	16	0
London	287	600
Morocco	2	1
Portugal	1	0
Prague	5	3
Russia	6	3
Saudi Arabia	0	9
Saudi Arabia (Jeddah)	5	2
Singapore	6	2
South Africa	6	0
Spain	12	6
Sri Lanka	3	14
Switzerland	1	3
US (Chicago)	2	2
US (Houston)	7	11
USA (New York)	1	9
Yemen (Sana'a)	2	0
	410	706

<sup>2</sup> (This table does not include all the countries due to data limitation)



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