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An Analytical Approach to Resolution of Commercial and Trade Disputes within European Union

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Abstract – Europe has been a centre for trade and commerce since ages. Industrial revolution in Europe has increased the competition among nation states within Europe. The Economies of Britain, Netherlands, Germany, France and Portugal have been competing with each other's in markets of Far East and South America. Though movements of goods and services have been a common feature among nation states within Europe a Common integrated market with regulatory mechanism is a recent phenomenon. In the middle ages and early part of the 20th century the trade disputes among different constituents have been resolved by bilateral treaties among nation states and through arbitration and intervention of Chamber of Commerce, guilds in case of commercial disputes between two commercial entities. The multilateral treaties to resolve trade and commercial disputes comes in picture in mid of 20th century when European Coal and Steel Community Treaty also known as Paris treaty was signed in 1951 it was followed by European Economic Treaty which was much wider and cover all segment of trade and commerce. However the present Union of Europe or better known as European Union a Union of Member States of Europe encompassing Economic and Political Union (to an extent) comes through Maastricht Treaty in 1992. The provisions of Maastricht treaty were much widened by later day treaties of Amsterdam, Nice and Lisbon. Europe has for the first time a Parliament of its own, a Monetary Union giving birth to Euro as Common currency, European Central Bank, Fiscal consolidation and free movement of trade and services. This all is regulated by European Union Law, which includes Trade laws through directives and regulations monitored by European Commission. Trade disputes among member states are resolving through Dispute Settlement Board (DSB). The trade disputes can be put in three categories one among member states within EU, secondly dispute between Member state of EU and Non Member states and third dispute arising out of non EU investor and Member of EU where EU is signatory to multilateral treaty and provisions of which has been violated by Member state. EU dispute settlement mechanism is largely based on WTO provisions and provisions of GAAT. In this article a study has been done on these disputes particularly where EU directives and Regulations are in conflict with Constitutional and Local Law of Member states.

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INTRODUCTION

Despite the successful achievements of the European Union (EU) accompanied with World Trade Organization (WTO) in reducing tariffs and non-tariff barriers in international trade, the EU has continued to face a legitimacy crisis (Peterman, 2013; Baker, 2012; McGuire, 2011; McGovern, 2014). New changes in the structure of international law coupled with historical, theoretical, structural reasons pertaining to establishment and evolution of the General Agreement on Tariffs and Trade (GATT) and subsequently the EU have raised serious concerns about the legitimacy of the EU. Globalization has brought about with it new challenges for international organizations as their mandate expands and infringes on what has always been seen as matters of internal domestic sovereignty (Bomber et al., 2012; De Ville, 2012; Robinson & Gibson, 2011; Brown, 2014). The rise of democratic principles has challenged the broad authority afforded to some international organizations and has called into question the accountability of those international organizations to their stakeholders (Poletti & De Bièvre, 2014; Van den Bossche & Zdouc, 2013; Monjon & Quirion, 2010).

The failure to reach a consensus on how to reform and balance the existing system through renegotiation of the EU agreements has shifted the spotlight to the most dynamic organ of the EU, its dispute settlement system (Goldstein, 2008; Hoekman & Kostecki, 2009). The EU's dispute

settlement system established as a result of the Marrakesh Agreement, constituted a substantial transformation from the previous GATT dispute settlement system. The evolution of dispute settlement from the GATT 1947 to the EU signified a shift from "the hall mark of diplomacy" to a specific "legal process" and established a completely restructured judicial or quasi-judicial organ within the EU, bringing about the most fundamental changes since the conclusion of the Uruguay Round (Goldstein, 2008; Dalhuisen, 2010). The new changes stipulated in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) were the result of frustrations of Contracting Parties with the GATT dispute settlement system. These frustrations essentially resulted from the absence of an appellate review mechanism, the exercise of voluntary judicial jurisdiction, the lack of established timelines to resolve the disputes, and the high possibility of blockage at the adoption and implementation stages of GATT dispute settlement. The negotiators addressed many of the drawbacks of the GATT dispute settlement system during the Uruguay Round, and were able to transform the GATT dispute settlement system into a powerful legal apparatus by which EU Members could effectively enforce their rights (Smith, 2013; Goldstein, 2008).

The EU dispute settlement system is granted with the authority to "clarify the existing provisions" of EU Agreements and "to secure a positive solution to a dispute." Such authority has been expanded significantly due to the broad array of subject matters that have been raised in disputes and the quasi-automatic mechanism for adoption of reports by the Dispute Settlement Body (DSB; Dalhuisen, 2010; Lee et al., 2009; Wallace et al., 2010; Goldstein, 2008). This allows the dispute settlement system to make changes within the system with less rigidity compared to other organs within the EU. The dissertation examines the structure of the EU dispute settlement system and inherent powers of panels and the Appellate Body (AB) to develop mechanisms contributing to the legitimacy of the dispute settlement system.

OVERVIEW OF EUROPEAN UNION

The European Union (EU) is an economic union and policy of 28 Member States independent mainly located in Europe. The EU has its origins in the European Coal and Steel Community (ECSC) and the European Economic Community (EEC), formed by six countries in 1957. In the years that followed, out of the EU grew in size through the accession of new Member States, at the same time increasing its sphere of influence through the inclusion of new political powers. The Maastricht Treaty established the European Union under its current name in 1993. The last major revision to the constitutional principles of the EU, the Lisbon Treaty entered into force in 2009. Brussels is the capital of that of the European Union (Horn et al., 2010; Goldstein, 2008; Lee et al., 2009; Wallace et al., 2010).

The European Union set up following World War II under the desire for putting an end to the bloody wars that frequently erupted between European neighbours, has throughout its history been an experiment in governance and integration. In 1951, under the Treaty of Paris, its six founders, Belgium, France, Germany, Italy, Luxembourg and the Netherlands, united into the European Coal and Steel Community for economic and security benefits. In 1957 they integrated deeper, economically, into the European Economic Community. In 1973, the first new members, Denmark, Ireland and the United Kingdom, joined, followed by most of Western and Central Europe into the 1990s and 2000s. The last crop of members, some of who were Soviet Union republics, joined in 2004 and 2007 (Dalhuisen, 2010; Goldstein, 2008; Dalhuisen, 2010; Lee et al., 2009)

The union, now with 28 member countries, has proved prosperous for its members, as they have benefited from each other's resources and from new opportunities presented to them through their collective strengths. The EU adopted and refined a set of criteria for those wishing to join to ensure that all members maintained certain standards in the areas of governance, economy and democratic norms. Though it was primarily an economic partnership at it's beginning, the EU now unites its members in various policies and structures and has its own set of institutions and leaders. The integration process has not always been a smooth one and the EU continues to wrestle with problems of cohesion (Dalhuisen, 2010; Horn et al., 2010; Goldstein, 2008; Smith, 2013; Wallace et al., 2010).

As the EU borders have moved further East disagreements have arisen. Some have questioned the benefit of admitting member countries who have nothing to offer the group, whose human rights records are nothing short of atrocious, and whose economies are never able to stand on their own after the Soviet breakup, have been even further ravaged by the recent economic crisis. The EU now is a true hodgepodge of characters – different languages, cultures, beliefs, religions, people and experiences – united across the European continent to foster "peace, prosperity and freedom for its 498 million citizens — in a fairer, safer world." Throughout its development the EU has presented itself as a unique economic, social and political enterprise (Horn et al., 2010; Goldstein, 2008; Smith, 2013; Goldstein, 2008; Dalhuisen, 2010).

It has sought to be a leader in modern policy-making, promoting itself as an example for developing and future regional unions. In this respect, the practice of public diplomacy has always been an important aspect of its international diplomacy strategy. The study uses Bruce Gregory's definition of public diplomacy here: Public diplomacy is "a coherent blend of activities used by governments, groups, and individuals to understand

attitudes, cultures, and mediated environments; engage in a dialogue of ideas between people and institutions, advise political leaders on public opinion implications of policy choices, influence attitudes and behaviour through communication strategies, actions, and messages, and measure results." (Goldstein, 2008; Goldstein, 2008; Smith, 2013; Wallace et al., 2010; Goldstein, 2008; Dalhuisen, 2010)

The EU operates through a system of institutions supranational independent and intergovernmental decisions negotiated between Member States. The most important EU institutions are the European Commission, the Council of the European Union, the Court of Justice of the European Union and the European Central Bank. The European Parliament is elected every five years by EU citizens (Hoekman & Kostecki, 2009; Lee et al., 2009; Horn et al., 2010; De Ville, 2012; Bown, 2014; Van den Bossche & Zdouc, 2013).

The EU established a common market through a standardized system of laws applicable to all Member States. In the Schengen area (which includes 22 member states and 4 states not members of the EU) have abolished passport controls. EU policies are designed to ensure the free movement of persons, goods, services and capital, legislate common issues in justice and maintain common policies on trade, agriculture, fisheries and regional development. The Euro Zone, the monetary union was established in 1999 and currently consists of 18 Member States. Through Foreign and Security Policy, the EU plays a role in external relations and defence. The EU has worldwide permanent diplomatic missions and is represented in the United Nations, the World Trade Organization (WTO), the G8 and the G20. With a total population of over 500 million people, which represents 7.3% of the world population, the EU generated a gross domestic product (GDP) of 12.2 billion euros in 2010, which represents about 20% of global GDP measured in terms of purchasing power parity (Van den Bossche & Zdouc, 2013; Robinson & Gibson, 2011; Robinson & Gibson, 2011).

In 2012, the European Union was awarded the Nobel Peace Prize, awarded by the Norwegian Nobel Committee " for its contribution over more than six decades for the advancement of peace and reconciliation, democracy and human rights in Europe". In announcing the award, the Committee noted, "the terrible suffering during the Second World War proved the need for a new Europe. (...) Today, a war between France and Germany is unthinkable. This shows that, through the goodwill and building mutual confidence, historical enemies can become allies (Bomberg et al., 2012; Baker, 2012; Horn et al., 2010).

WTO/EU BODIES INVOLVED IN THE DISPUTE SETTLEMENT PROCESS

The DSU has appointed several bodies within the WTO/EU dispute settlement mechanism to deal with the settlement of disputes among WTO/EU Members. These bodies are comprised of the DSB, panels, the AB, the Director-General and the WTO/EU Secretariat, arbitrators, independent experts, and several specialized institutions. Because there are various procedural matters that impact the legitimacy of the WTO/EU dispute settlement system, understanding the structure of the WTO/EU dispute settlement structure is important in framing the discussion of its legitimacy (De Ville, 2012; Bown, 2014; Goldstein, 2008; Dalhuisen, 2010; Goldstein, 2008).

DISPUTE SETTLEMENT BODY (DSB)

The DSB, as the representative of the political organ of the WTO/EU, is involved in the adjudicatory function of the organization. The DSB is composed of representatives of all WTO/EU Members. Article IV: 3 of the WTO/EU Agreement requires the General Council to "discharge" the responsibilities of the DSB as provided for in the DSU. The DSB is in charge of administering the DSU rules and procedures and has "the authority to establish panels, adopt panel and AB reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions as well as other obligations under the covered agreements." (Van den Bossche & Zdouc, 2013; Goldstein, 2008; Dalhuisen, 2010)

In order to guarantee that the decisions of the DSB do not exceed its mandate, decisions are to be taken by consensus. However, as discussed above, in the three distinct instances of establishing panels, adopting the AB or panels' findings, and authorizing retaliation, the reverse consensus rule applies and the decisions are considered to be adopted by consensus in the absence of an objection by all DSB members. In practice, the principle of automatic adoption has given the panellist, and to an even greater degree the AB, significant power that could impact the rights and obligations of WTO/EU Members. The findings of panels or the AB are *not per se* binding. In order to bestow binding authority on the findings, the decisions have to be adopted by the DSB. Such process was designed to reach to a balance between the political and adjudicatory organs of the WTO/EU (Poletti & De Bièvre, 2014; Monjon & Quirion, 2010; Horn et al., 2010; Goldstein, 2008). Under the GATT legal system, the ability of any Contracting Party to block the adoption process was considered a significant obstacle to adopting panel reports.

The adoption process under the GATT was part of the equilibrium that existed between the political and legal functions of the WTO/EU.

In other words, in order to reach a binding decision, all Contracting Parties including the party ruled against had to accept the findings of a panel. The adjudication process was mainly considered a tool that was leveraged in political negotiations between Contracting Parties. Therefore, the political organ of the GATT could practically control the decisions generated by the legal organ of the GATT (Horn et al., 2010; Monjon & Quirion, 2010; Poletti & De Bièvre, 2014). The reverse consensus principle implemented by the WTO/EU changed the adoption process by establishing a quasi-automatic adoption mechanism. Although blocking the adoption process under the reverse consensus principle is still technically feasible, it has proven to be next to impossible in practice. Although WTO/EU Members have opportunity to express their concerns or views on findings, the findings of panels and the AB are ultimately binding on parties of the disputes upon adoption of the decision by the DSB. Another responsibility of the DSB is to "maintain surveillance of implementation of rulings and recommendations." Any Member can raise the issue of implementation at any time in the DSB. The issue of implementation is placed on the agenda of the DSB six months following the date of establishment of the reasonable period of time. The issue of implementation shall remain on the DSB's agenda until the issue is resolved. At least 10 days before such DSB meeting, the Member complained against is required to provide the DSB with a written status report of its progress in the implementation rulings and recommendations (Monjon & Quirion, 2010; Horn et al., 2010; Dalhuisen, 2010). Surveillance by the DSB and providing status reports to the DSB can impose political pressure on the non-complying party to bring its measures into compliance with WTO/EU laws.

The credibility of the WTO/EU dispute settlement system relies to a great extent on the implementation of the decisions by the WTO/EU Members. Therefore, WTO/EU Members attempt to enforce the rulings and recommendations of the DSB in order increase its credibility and legitimacy.

THE DIRECTOR-GENERAL AND THE WTO/EU SECRETARIAT

The Director-General of the WTO/EU may be involved in the dispute settlement system. For example, the Director-General, in an *ex officio* capacity, may offer his good offices, conciliation, or mediation to assist Members in settling disputes. Furthermore, the Director-General convenes the meetings of the DSB. If the parties cannot agree on the composition of a panel within 20 days, it is the Director-General who appoints panel members upon the request of either party, and in consultations with the Chairman of the DSB and the Chairman of the relevant Council or Committee. The Director-General can also appoint the arbitrator(s) for the determination of the reasonable period of time for implementation of rulings and recommendations, if the parties cannot agree on the period of time and on the arbitrator (Monjon & Quirion, 2010; Goldstein, 2008; Horn et al., 2010; Poletti & De Bièvre, 2014).

The staff of the WTO/EU Secretariat, who report to the Director-General, have an obligation to assist Members with respect to dispute settlement at their request, to conduct special training courses, and to provide additional legal advice and assistance to Member countries in matters relating to dispute settlement. Furthermore, the Secretariat assists parties of the disputes in composing panels by proposing nominations for panellists to hear the dispute, It assists panels once they are composed, and provides administrative support to the DSB (Monjon & Quirion, 2010; Horn et al., 2010).

DISPUTE SETTLEMENT SYSTEM

Qureshi (2003) provides an interesting introduction to the question of EU member country participation in EU disputes. As the author points out, the participation of EU member countries in the EU dispute settlement mechanism has become a popular topic for research, and the role of EU member countries in the EU will continue to be an important research agenda, particularly as the EU gains more members and becomes more diverse. The growing power of EU member countries mean that they are becoming an important force in EU policy making in regard to dispute settlement. Industrialized countries, the author points out, might have a comparative advantage in legal expertise, though these countries may well have an interest in preserving that comparative advantage, while large, powerful EU member countries such as Germany or France may be looking to foreign legal expertise when they have perfectly adequate domestic legal capacity.

EU member country participation can be examined in a number of ways, Qureshi (2003) argues. Among measures to be considered are: the total number of disputes in the DSM involving a EU member country; the number of cases involving EU member countries as compared to those involving developed ones; the number of successful cases brought by EU member countries; and the percentage of cases in which EU member countries are involved based on trade volume or market access commitments. Each of these measures can provide insight into different aspects of EU member country participation, and the challenges that EU member countries may face are different based on the measure that is considered.

In his study paper Dr Alaistair Young of University of Glasgow (2013) providing an interesting insight into EU Trade Barrier regulation. According to him the EU has two principal mechanisms for deciding which trade barriers to pursue and how: the Trade Barrier Regulation (TBR) and the 'non-procedure' of the 133 Committee. The TBR roughly parallels the Section 301

provisions of the US. It provides a legalistic mechanism through which European trade association or firms can raise foreign trade barriers formally with the Commission. The Commission is then under a legal obligation to investigate and to propose action if the barrier is causing harm and if it is in the 'Community interest' to do so. The Commission is in the driving seat, but is obliged to consult the member governments, represented in the advisory TBR Committee. The TBR Committee can refraction its dislikes to the Council. The Council requires a qualified majority (a super majority) to block the Commission's proposed action. As of 30 June 2004 this had not happened. As of 30th June 2004 there had been 21 TBR complaints. Of these only one has been rejected, although others have been discouraged before they have been brought formally. Eight of the TBR complaints have led to WTO complaints.

Two other TBR complaints led to the EU joining other WTO complaints as a third party Given that TBR complaints account for less than 13 percent of the EU's WTO complaints, the 133 Committee route is clearly important. This route is not governed by any specific legislation, but is derived from the trade policy powers rooted in the 1957 Treaty of Rome. The Commission again takes the lead, but under this route it consults with the Council's 133 Committee of trade experts. Although there is some ambiguity about the legal requirements, in practice the Commission does not proceed with a WTO Complaint unless it has the support of a qualified majority of the 133 Committee. As of 30 June 2004, the Council had approved all of the Commission's proposals to initiate formal WTO complaints. It clearly reflects that EU Trade dispute mechanism has failed to meet its objectives. (2013) Journal of University of Glasgow Department of Politics (April 2013) Pg 6-9.

Journal of Contemporary European Research (2013) in book review of Anne Theis book of International Trade Disputes and EU Liability When it comes to the European Union (EU) and the United States, the biggest trading partners, implications are rather grave. Not only for those that are directly involved in trade disputes (companies that produce products, such as bananas and hormone -treated meat), but also for those who have little to do with the trade dispute itself (producers of paper boxes, wallets or coffee among others). When the EU violates international trade agreements, retaliation measures of its trading partners hurt many businesses. The question is who is liable for damages triggered by the EU's conduct? What are legal implications for such damages for natural and legal persons? And what are the consequences of the EU's domestic system of rights and judicial protection rules (a so -called 'pure' EU law)? (Journal of Contemporary European Research, Vol 9, No 4 (2013).

Existing literature suggests that there are three possible challenges to EU member country participation in the dispute settlement system (Shaffer 2006). First, EU member countries may lack legal expertise, as well as the ability to identify and challenge barriers to trade. Second, EU member countries might lack domestic resources, particularly financial, to hire legal counsel and make use of the dispute settlement system. Finally, EU member countries may fear political retaliation from large, industrialized opponents such as the United States, making them unwilling to initiate a dispute against one of these powerful countries. The dispute settlement system purports to provide full equality before the law, a level playing field so that even the smallest EU member countries can have a mechanism by which they can pressure large industrialized countries into fulfilling their trade obligations. Using measures of participation rates against membership, the literature seems to show that small EU member countries may be underutilizing the DSM.

The first two theories for explaining participation in the EU dispute settlement mechanism involve a lack of legal expertise and/or domestic capacity and resources, explanations that are frequently cited as the reason for lack of participation. A lack of legal expertise means that EU member countries and least-developed countries (LDCs) do not have the ability to fully understand and utilize the dispute settlement process; and a lack of domestic capacity and resources means that even if they have a

Valid complaint, they do not have the means to adequately bring that complaint before the EU.

The literature suggests that industrialized countries are overrepresented in the DSM, and that the reason for this is the lack of legal capacity in small EU member countries, and several of the major studies that support this will be examined.

Alternatively, according to the third theory, the power/retaliation theory, a lack of participation may be because EU member countries: 1) have limited retaliatory power (and thus difficulty ensuring enforcement of rulings), or 2) neglect to bring valid cases before the DSM because they depend on large countries for economic or political reasons, such as foreign development aid (Horn, Mavroidis, Nordstrom 1999). This power theory that many scholars in the field have considered, including Horn, Mavroidis, and Nordstrom in one of the well-known papers on the subject, would also predict that larger countries would disproportionately target smaller countries rather than countries of similar size and power: it suggests that imbalances of power best predict the distribution of disputes.

Horn, Mavroidis, and Nordstrom (1999) study the effects of legal capacity on participation. The authors

created an extensive dataset of all EU disputes to study patterns of participation across all EU members. They construct a novel measure of the expected number of disputes in which a country will participate. In order to construct this measure, they make the assumption that disputes are distributed randomly: there is no uniform theory of the distribution of potential trade disputes, they argue. Some theories may predict higher numbers of trade disputes in countries with protectionist governments who seek to implement additional protectionist policies. Other theories, however, may predict the opposite as protectionist governments have reached their acceptable levels of trade barriers and do not seek to add additional illegal protectionism to their policies.

Diana Kanecka (2012) in her Research Thesis on EU China Trade Relations "An Analysis of European Union Code and Practice relating to Trade Defence Instruments in disputes with China within WTO Framework. Dr Diana provides an insight into certain aspects of EU China Trade relations concerning mainly on EU Code of Practice and its implementation on trade defence instruments. The study emphasis on improving upon EU Code of Practices on Trade Defence instruments in a non-political non-confrontationist manner to reduce the increasing number of litigation. The Thesis successfully point out the deficiency in EU Law and Policy relating to resolution of Trade and Commercial disputes.

Because of the lack of a comprehensive theory of the distribution of trade disputes, they assume that potential disputes are randomly distributed across sectors of trade, and therefore it is export diversity that will predict the number of disputes in which a country participates. As they phrase it, "it does not matter what you export or to whom you export, the probability of encountering a [disputable trade measure] for any given product in any given market is the same" (Horn, Mavroidis, and Nordstrom 1999; 6).

While one can certainly question their underlying assumption that each country is equally likely to violate a EU agreement, their assumption allows them to create an expected number of potential trade disputes based on the export diversity of any given EU member country, giving them the opportunity to discern whether EU member or small countries are actually involved in as many disputes as their trade diversity indicates that they should be. The authors use their measure of expected number of trade disputes based on export diversity and compare this value to the actual number of disputes in which each member country participates. Their model is well fitted and does a satisfactory job of explaining existing patterns of disputes, though they find that a few major exporters (the United States, the European Union, Canada, and, notably, India) participate in more disputes than would be predicted by their model. They also find that many small, poor countries participate in fewer disputes than would be predicted by their model. In order to determine the reason for this discrepancy in participation levels, they turn to the existing theories that explain participation: the power hypothesis, which predicts that imbalances of power best predict the distribution of disputes; and the legal capacity hypothesis, which predicts that the absence of legal capacity explains the lack of participation by EU member countries.

While they were able to refute the power/retaliatory hypothesis, they did find some support for the idea that legal capacity drives participation by introducing a measure for legal capacity into their model of expected number of disputes. The authors conclude that some small, poor countries tend to be underrepresented, and that this is due to a lack of domestic legal capacity in these countries.

Guzman and Simmons (2005) also show that the managerial legal capacity explanation seems to drive participation by EU member countries. In contrast to Horn, Mavroidis, and Nordstrom (1999), who look at the absolute number of disputes in which a country is expected to participate, Guzman and Simmons look at the kinds of countries that are targeted as defendants in EU disputes for evidence on the mechanisms at work in predicting participation: they consider which factors prompt a EU member country to target another member in a EU dispute. Their theory suggests that if power and wealth are truly irrelevant in the DSM, the income and economy size of a complainant should not be predictive in the economy size of the defendant. If the power hypothesis is correct, small, poor countries should avoid filing cases against wealthy defendants in fear of retaliation. If the legal capacity hypothesis is correct, small countries should only file disputes against large countries because their capacity to file disputes is limited and they should only select defendants with large expected returns. They conclude that small, EU member countries are under participating, and that the variables of interest in predicting which countries participate are legal capacity variables. They also find that some member countries are active participants in the dispute settlement mechanism, which is explained through the literature by the possibility that some EU member countries, while poor on average, have an educated bureaucracy with the capacity to identify and initiate trade disputes. Overall, their research seems to show that the power hypothesis does not do an adequate job in predicting dispute patterns within the EU, while their model (Which uses a proxy for legal capacity) indicates the legal capacity hypothesis satisfactorily predicts these dispute patterns.

Busch, Reinhardt, and Shaffer (2008) conduct a different study in which they construct a specific measure of legal capacity using survey and interview information. The authors found that in talking to EU representatives, a lack of legal capacity is frequently cited as the main constraint driving the lack of participation by smaller, EU member countries. Busch, Reinhardt, and Shaffer begin by outlining the often-repeated concern that EU member countries under

participate in the DSM, citing the fact that 76% per cent of all EU disputes have been launched by a small group of EU Members. It has been also noticed that countries such as the US, Canada, Brazil, India, Mexico, Korea, Japan, Thailand, and Argentina more actively participate in trade dispute settlement with EU than member countries within EU. They believe that other EU member country members are constrained by their lack of domestic legal capacity, leading to their under participation. They use the results of their survey to construct a novel measure of legal capacity that includes both objective facts and subjective perceptions on the role of legal capacity in EU dispute initiation.

They use this measure of legal capacity to create a model predicting participation in antidumping disputes within the EU. They model not only probability of filing an anti-dumping dispute, but also the likelihood of implementing a policy violating the EU anti-dumping rules based on legal capacity of EU members.

The authors find in their model that countries with low levels of legal capacity and bureaucratic quality initiate fewer disputes in the DSM when faced with violations of anti-dumping obligations, and that legal capacity may act somewhat as a deterrent in implementing policies that violate EU obligations. Similarly to previously mentioned studies, they find the power hypothesis to be inadequate in explaining participation patterns in the EU dispute settlement mechanism.

Paul H Nitze (2013) of School of Advanced International Studies John Hopkins University in his paper "how dangerous EU-US Trade Disputes are for transatlantic relations". Paul Nitze in his paper mentioned that The United States of America on one side and the 28 countries that comprise the European Union are the two largest economies in the world, and possess the world's biggest bilateral trading and investment relationship. The enormous impact of trade relations between the two continents creates thousands of jobs and wealth on both sides of the Atlantic. These transatlantic flows of trade and investment amount to around $1 billion a day, and jointly, the global trade accounts for almost 40 % of world trade. Every relationship has its own pitfalls and troubles, and if not kept in check the trade disagreements that arise between these powerful entities can pose a dangerous threat to the entire relationship. Unfortunately, the disagreements that result can become so heated that a complete trade shutdown of certain items occurs. EU/US beef trade dispute. Is now in its 14th year after several interesting milestones in the dispute's history. The Office of the US Trade Representative identifies several important milestones in the case beginning in 1985, when the EU restricted use of hormones to therapeutic purposes only.

This was followed by a complete ban in 1989 on meat from animals treated with six growth hormones, effectively ending virtually all importation of American and Canadian beef.

In 1996 the US and Canada consulted the World Trade Organization (WTO) about the ban, with the WTO ruling in 1997 that the EU's beef ban was not based on scientific evidence. This is evident of a mechanism failure of EU dispute mechanism system and as well as of EU law and policy governing resolution of such disputes.

Nērika Lizinska (2014) a fellow of University of Latvia presented a paper on Arbitration in Europe Article 2 of the European Convention on International Commercial Arbitration. In her paper she mentions that Article 2 (1) of the European Convention states as follows: " . . . legal persons considered by the law which is applicable to them as 'legal persons of public law' have the right to conclude valid arbitration agreements."

The term "legal persons of public law" is used here instead of "state" in order to cover a broader scope of state institutions, such as state agencies, public entities, and governmental institutions. Article 2 (2) of the European Convention stipulates, "On signing, ratifying or acceding to this Convention any State shall be entitled to declare that it limits the above faculty to such conditions as may be stated in its declaration." "The content of Article II met strong opposition from Civil Law countries where public entities are, generally, prohibited from resorting to arbitration. To accommodate these States, which otherwise would have not ratified the Convention, a second paragraph providing for the possibility of a reservation was added to Art. II."

Economist (2014) article on doing business in Europe legal hassles refer to World Bank annual Report on "Doing Business" ranking 189 economies by how attractive they are to firms. The report's most interesting data—on the time it takes to settle a commercial dispute or to wind up a company—shed light on the problems facing Europe's periphery since the global financial crisis. Countries where it is quick and easy to do these things are usually more attractive to investors than places with lethargic legal systems. In much of southern Europe, which has been hit hard by the crisis, the courts are far slower than places such as France and Germany. This helps to explain why investment has been slow to revive there. In some places the situation is getting worse. It now takes more than two months longer to enforce a contract in the Slovenian court system than it did a year ago. And in Greece, it now takes more than four years, up around 18 months since 2010. In both places, strikes by judges, and politicians' reluctance

to push through legal reforms, have caused a backlog of cases to mount up.

Jacqueline M. Nolan-Hale, (2012) civil justice systems are having their share of troubles in Europe as costs and delays associated with courts and the litigation process have significantly impacted citizens' access to justice. As a result of multiple, systemic problems in accessing justice, the alternative dispute resolution (ADR) movement have experienced a steadily growing presence in both civil and common law jurisdictions. Over the last two decades, the European Union (EU) has intentionally promoted mediation and other forms of ADR to advance access to justice goals and has done so with a high degree of intensity. Of all the ADR processes, mediation in particular, is at the forefront of EU discussions about access to justice and efficient dispute resolution. The shift toward mediation suggests that in many respects, mediation is capturing the access to justice movement. A Mediation Directive issued in 2008 by the European Parliament and the Council enhanced its prominence as an access to justice vehicle in the EU. The Directive required Member States to implement structures to support mediation of cross-border commercial disputes in the EU by May 2011.

European Parliamentary Research Service (Oct, 2013) in a research paper on EU Jurisdiction Rules mentioned Disputes regarding industrial actions Under Brussels I an employee or trade union may be sued in the Member State where the 'harmful event' occurred or may occur. Under case law of the Court of Justice of the EU, this includes both the location of the event causing the damage (e.g. industrial action) and the place where the damage occurred (e.g. where the firm allegedly suffered a loss). However, Rome II provides that, in case of liability arising from industrial action, the applicable law is that of the country where such an action is to take place or has taken place. This does not include the place where illegal industrial action causes harm. Discrepancy between Brussels I and Rome II may lead to a situation in which a court in country A has to apply country B's law.

Mathias Rose (2009), in his paper on Bilateral Disputes between EU and Russia pointed out that over the past years a series of disputes between EU Member States and Moscow have significantly affected EU –Russian Relations and exposed sharp internal differences between EU Member states in their approach towards Russia. The common law relating to trade disputes of Member states are in direct conflict between EU Law and Policy. The problem arises where land locked countries transport their goods through third countries who are also member of EU to Russia. This brings EU trade law relating to trade disputes in picture while such member states contend that trade is direct between such nation and Russia a non EU Member state the trade dispute be governed by common law of their country or bilateral agreement between Russia and such country. While EU law contended all intra trade which includes transportation attracts EU Law.

Wouters Jan, Idesbald Goddeesris, Bregt Natens , Filip Ciouritz, 2013 in their working paper indicated five areas of disputes which comprise of Labour standards and GAAT mode for liberalisation, Intellectual Property Protection and generic medicines, subsidized agricultural and dairy sector, shared values and trade negotiations, efficient trade negotiations and Transparency. The EU law concerning Transparency and decision by European Court on the matter has come under sharp criticism of civil society and parties to dispute requiring a revisit to matters relating to disclosure norms in a trade dispute between EU and Non EU states.

CONCLUSION:

Dispute resolution mechanism has been a major stumbling block among EU member states for several centuries. European nations from first peace conference in Hague to Lisbon treaty special emphasis has been laid on negotiations among states and evolving consensus before incorporating it in EU dispute resolution mechanism. Significant progress has since been made with WTO and GAAT provisions working as ground rules in evolving a Trade and Commercial dispute mechanism in Europe. The investor – state dispute resolution which often form part of cases before permanent court of Arbitration usually involve deviation from bilateral and multilateral treaties from investor point of view while some time EU trade directives and regulations runs contrary to not only national laws but also constitutional laws of member states. This has come out as major challenge before EU Commission. The paper highlights the entire commercial and trade dispute resolution in that gamut and try to seek answers for the same.

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