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COMMERCIAL DISPUTES**

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Evaluation the Trade Decision-Making in the European Union In Terms Of Resolving Commercial Disputes

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Abstract – European Union since its inception has been struggling to evolve a Decision making mechanism on Trade issue. Over the years much deliberations has taken place on this issue among member states. The entry of new members particularly from East European and Baltic States with a different system of decision making in trade issues has complicated the problem. There has been no single pattern of EU decision making in European Union. The primary focus has been to arrive at decision on trade and commercial issue through negotiations and consensus. The states always ensure that their national economic interests are preserved and protected while framing rules and regulations. In this paper an effort has been made understand and evaluate the process of trade decision making in European Union.

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TRADE DECISION-MAKING IN THE EUROPEAN UNION

Probably the most comprehensive overview of policy-making in the European Union today is provided in the volume edited by Wallace and Wallace (2000). The contributing authors examine the institutions, theory, history, and external policies of the European Union in depth and provide a detailed picture of the diversity of EU policy-making across a range of policy domains.

In his contributing study, W. Wallace (2000) maintains that there exists no single pattern of EU policy-making. Instead, he argues, different demands, institutions, and actors characterize each issue area. According to the author, "the process of how a decision is reached in a distinctive issue area cannot easily be divided into technical preparations and strategic decisions" (W. Wallace 2000, 524). Policy outcomes, according to his views, are rarely and entirely anticipated. Rather, they develop in a process of mutual learning in which ideas and interests shape the search for consensus.

W. Wallace (2000) identifies what he calls "governmental entrepreneurship" (p. 541) as a primary driving force behind EU decision-making today. Member governments in the EU continue to ensure that their cultural roots and national economic interests are preserved within the Union and in external negotiations. He argues that European Commission leadership and demands of transnational economic

interests only play a subordinate role. The author concedes,

However, that "the development of European policies partly responds to external challenges and the perception of European elites that common approaches to global negotiations maximize their ability to promote their interests and protect their values" (p. 524). European trade policy, he argues, is based on social market principles that are laid out. For example, in the 2000 Charter of Fundamental Rights of the European Union (European Parliament 2001).

In his analysis of political opportunity structures in the European Union, Peterson (1997) identifies EU "policy networks" (p. 1) as the important link between EU member states and their societies. While he identifies the Council of Ministers' as the most powerful institution with regard to EU decision-making, the author maintains that, in practice, much of the Council's authority is exerted by civil servants in "technocratic working groups" (p. 4) where there is fierce competition over legislative proposals. According to the author, "it is here where most European legislation is made, where most lobbying takes place, and where most of the [EU] 'national interest' is defined and decided" (p. 4).

Elected political actors, according to this view, are for the most part removed from much of the day-to-day process of EU governance. Interest groups, on the

other hand, “cannot influence the policy process simply by identifying themselves with the ideology or program of a ‘government’ or an ‘opposition’, because the EU has neither” (p. 4). Their best chance of influencing EU policymaking, according to the author, is to lobby member governments that share their ideological and programmatic objectives.

Woolcock (2000) provides an overview of the determinants of the EU trade policy process and identifies four core issues in EU trade decision-making: competence, setting of objectives for negotiations, conduct of negotiations, and adoption of the results (p. 374). He argues that EU trade policy-making is essentially located in the interchange between the Commission and the member governments, in the Council of Ministers, and the Article 133 Committee. The Article 133 Committee is composed of top-level national trade officials from all the member states as well as representatives from the Commission, and discusses negotiating positions and the status of trade negotiations with the European Commission and the member states in monthly meetings (Murphy 2000, 101).

According to Woolcock (2000), the issue of competence in international trade negotiations, i.e., the assignment of policy powers between the EU and its member states arises as some trade issues fall under EU and some under national competence. He stresses that the European Commission in accordance with the European treaties has the sole authority to negotiate on all trade policy issues regardless to how legal competences are assigned which allows the EU to “speak with one voice” (p. 375). At the same time, the author concedes that despite this orientation towards compromise, difficulties can emerge when it comes to the adoption of agreements. Then the European Court of Justice (ECJ) decides whether trade competence for a particular issue lay with the Commission or the member states.

According to Phillip de Baere (2012) The EU’s anti-dumping policy has traditionally been characterised by a bias in favour of the complaining domestic producers. This is particularly the case in investigations against so-called non-market economy (NME) countries, such as China. For many years, Chinese exporting producers have been treated considerably worse than exporters from other countries. They had to demonstrate that they qualified for market economy status and/or individual treatment by meeting a number of very strict conditions that were not imposed on exporters from other WTO members. Moreover, they enjoyed fewer procedural rights than other exporters because of the limited access granted to the data used for the determination of the dumping and injury margin. A similar bias in favour of the EU producers could be found also in the way the European Commission determined the existence of material injury to the EU industry. Instead of examining a representative portion of the industry as a whole, the EU invariably based itself on a small share of the total

industry consisting exclusively of companies supporting the imposition of anti-dumping measures.

In his study on the role of the European Commission in EU decision-making on agriculture in the Uruguay Round, Vahl (1997) puts forward a framework for analyzing the Commission’s role in the EU’s decision-making process based on the broader discussion on European integration and the Commission’s institutional position. In his conclusion, the author describes the Commission’s leadership role and its ability to steer EU decision making as “leadership in disguise” (p. 157). In his view, the Commission does not have the “hard power” to tell others what to do, but uses non-coercive or “soft power” strategies such as persuasion and the management of information to shape the presentation of issues and the framework of deals in ways that promote agreement.

European Parliamentary Research Service in its paper of (2013-14) refer to EU India Trade disputes relating anti-dumping measures, taxes and duties on alcohol which threaten the proposed Bilateral Trade and Investment agreement between India and EU in year 2014. The issue gain significance as under EU Antidumping measures Regulations and directives (these have force of a law and matter of dispute in European Court of Justice and EU Trade Tribunal) impose stringent duties on Polyethylene Terephthalate (PET) imports from India.

EU brought cases against India on Anti-dumping measures On 8 December 2003, the EU requested consultations with India on 27 Anti –dumping measures regarding various EU export products, including pharmaceuticals, chemicals, paper, textile and steel. The EU argued that there was a lack of evidence of the claimed dumping effect, and that analysis of the injury and causality was insufficient. While most of the contested measures have been terminated by India, including those on steel and pharmaceutical products, the dispute remains under consultations. The issue relating to import of generic medicines from India has to be resolved through mutual agreement rather than under EU Trade Dispute settlement mechanism which seriously undermine EU Law and Policy relating to settlement of Trade and Commercial disputes the subject matter of research. In case EU Dispute Settlement law has to be bypassed to resolve disputes through bilateral agreements it seriously undermines the very existence of such law.

European Parliamentary Research Service in its paper of (2013) pointed out towards EU-US trade dispute which effect 2% of total trade between the two trade blocks. The prominent cases of disputes relate to Airbus- Boeing disputes concern subsidies to the respective companies. In 1992 the EU and the US concluded a bilateral EU-US Agreement on Trade in Large Civil Aircraft, which regulated the granting of subsidies in this area. In October 2004, the US announced its withdrawal from the 1992 Agreement and challenged public subsidies granted to Airbus. In

response, the EU challenged public support granted to Boeing. The WTO ruled that both sides had infringed the rules on subsidies, and so both parties then asked the WTO to allow counter-measures, with the EU doing so on 27 September 2012. While imposition of such measures could lead to a trade war involving other sectors. Second dispute relate to WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures all measures aimed at protecting human, animal and plant health must be based on scientific principles, and not discriminate arbitrarily or unjustifiably. The ongoing poultry dispute, as well as the earlier beef and GMO disputes, highlight the significant divergence in understandings of scientific evidence scientifically proven risk and the precautionary principle between the US and EU.

The poultry dispute concerns an EU prohibition on the use of anything other than water to remove surface contamination on meat, thus preventing imports of poultry treated with antimicrobial rinses from the US. The prohibition was established in 1997, and in 2009 the US requested the WTO to establish a dispute settlement panel, claiming that the EU measures were not based on scientific principles. The panel has been formally established, but has not yet started work. The inability of EU Trade Dispute Mechanism and EU directives and regulations governing trade disputes have forced the matter to be referred to WTO for resolution of disputes.

In trade matters, the Council for General Affairs, which is composed of the member countries' foreign ministers, authorizes a mandate from which the Commission negotiates on the basis of a previous Commission proposal that is drawn up by the Directorate-General (DG) Trade headed by the EU Trade Commissioner in cooperation with other Commission DGs (Woolcock 2000).⁴ With regard to agricultural trade, however, the Agricultural Council, which is composed of the member countries' agricultural ministers, authorizes the negotiating mandate on the basis of a proposal made by DG Agriculture. Cadot and Webber (2001) argue that as compared with the DG Trade and the General Affairs Council, which require to balance domestic political needs with external political obligations, the DG Agriculture (formerly DG IV) and the Agricultural Council give greater priority to the satisfaction of domestic interests (pp. 10-11). Stevens (2000) points out that EU policymaking in trade and aid towards developing countries used to be relatively straightforward.

However, "by 1999 four DGs, five Commissioners, and the European Parliament were all closely and directly involved in the formulation and implementation of policy (if transition economies are included), and the member governments were also deeply enmeshed in the process. Moreover, decisions had to be framed in response to pressures in Geneva (from GATT and

later WTO) as well as Brussels and the national capitals" (p. 402). Woolcock (2000) emphasizes that the role of the EP and the national parliaments in setting the trade agenda is "at best indirect" while interest groups and non-governmental organizations (NGOs) play a substantial role in providing information and other input (p. 380). The author maintains that, for example, in the negotiating phase of international trade agreements, the Article 133 Committee serves as the essential link between the Commission and the Council in a consultation process in which its members frequently evaluate negotiating positions and the status of negotiations with both institutions. Council decisions to adopt the results of international trade agreements are taken either by unanimous vote or qualified majority voting (QMV) depending on competence distribution. In practice, Woolcock (2000) argues, the Council has sought consensus on important trade agreements in order to avoid later disputes between the member governments. He concedes, however, that the current process is neither especially transparent, nor accountable and that the existing processes are characterized by their "informality" and by the "predominance of a relatively small expert policy community" (p. 394).

The author recognizes the lack of democratic accountability of EU trade policy, but also emphasizes that a "politicization of EU trade policy would certainly add inertia to the EU decision-making process, and considerably constrain the EU's room for manoeuvre" (p. 387). He predicts that EP will play a more important role in the future, as issues will increasingly fall under the 'co-decision procedure'.

CONCLUSION:

In the end we find that while arriving at decision making covering interest of European Union as trade bloc against Non Member States like United States in Poultry case is easier as compared to differences among member states in decision making. There has been several instances where Germany and rest of members have been at cross ends. IN Greece bailout the deliberations and conditions of bailout has been much deliberated wherein Germany insisted on strict bail conditions while other member states were in favour of easing out norms for Greece as one time exception. We find that it is a long drawn process where ultimately a middle path is find to arrive at consensus but financial clout of Member states also plays a role in such decision making as evident in several cases.

REFERENCES:

Alaistar Young(2013) Journal of University of Glasgow Department of Politics (April 2013) Pg 6-9.

- Baker, B. K. (2012). Settlement of India/EU WTO dispute re seizures of in-transit medicines: why the proposed EU border regulation isn't good enough.
- Bomberg, E., Peterson, J., & Corbett, R. (Eds.). (2012). *The European Union: how does it work?*. Oxford University Press.
- Bown, C. P. (2014). Trade Policy Flexibilities and Turkey: Tariffs, Anti-dumping, Safeguards and WTO Dispute Settlement. *The World Economy*, 37(2), 193-218.
- Cadot, Olivier and Douglas Webber. 2001. *Banana Splits and Slipping over Banana Skins. The European and Transatlantic Politics o f Bananas*. EUI Working paper.
- Centre for European Policy Studies (2009) Bilateral Disputes between EU Member States and Russia. CEPS working document No 319/August 2009.
- Dalhuisen, J. H. (2010). *Dalhuisen on Transnational Comparative, Commercial, Financial and Trade Law*. Hart.
- El-Agraa, A. M. (2011). *The European Union: economics and policies*. Cambridge University Press.
- De Ville, F. (2012). European Union regulatory politics in the shadow of the WTO: WTO rules as frame of reference and rhetorical device. *Journal of European Public Policy*, 19(5), 700-718.
- Economist (2014) Caught up in the Courts Doing Business in Europe sluggish legal system Economist November ,2014 issue
- European Parliamentary Research Service (2013-14) briefing paper on EU India Trade Disputes at WTO Level Pg 1-4 (2013-14).
- European Parliamentary Research Service, (2013) briefing paper on EU India Trade Disputes at WTO Level Pg 3-8 (April 2013).
- European Parliamentary Research Service, (2013) EU Jurisdiction ruling applicable to industrial disputes October, 2013 Page 1
- Goldstein, J. L. (2008). *The Evolution of the Trade Regime: Politics, Law, and Economics of the GATT and the WTO*. Princeton University Press.
- Goldstein, J. L. (2008). *The Evolution of the Trade Regime: Politics, Law, and Economics of the GATT and the WTO*. Princeton University Press.
- Hoekman, B. M., & Kostecki, M. M. (2009). *The political economy of the world trading system*. Oxford University Press.
- Horn, H., Mavroidis, P. C., & Sapir, A. (2010). Beyond the WTO? An anatomy of EU and US preferential trade agreements. *The World Economy*, 33(11), 1565-1588.
- Journal of Contemporary European Research (2013) International Trade Disputes and EU Liability Vol 9, No 4 (2013)
- Kanecka Diana (2013) EU-China Trade Relations The Analysis of the European Union's Code and Practice Relating to Trade Defence Instruments in Disputes with China within the WTO framework.(College of Europe Department of European Interdisciplinary Studies Master Thesis 03/2012).
- Lee, K., Sridhar, D., & Patel, M. (2009). Bridging the divide: global governance of trade and health. *The Lancet*, 373(9661), 416-422.
- McGovern, E. (2014). *International trade regulation* (Vol. 2). Globefield Press.
- McGuire, C. J. (2011). Marine Mammals and International Trade: Balancing Social Conscience with Trade Obligations—A Summary and Update on the World Trade Organization Seal Products Dispute. *International Environmental Law*, 13(2), 13-17.
- Meunier, Sophie, and Kalypso Nicolaidis. 1999. "Who Speaks for Europe? The Delegation of Trade Authority in the EU." *Journal o f Common Market Studies* 37 (September): 477-501.
- Monjon, S., & Quirion, P. (2010). How to design a border adjustment for the European Union Emissions Trading System?. *Energy policy*, 38(9), 5199-5207.
- Murphy, Anna. 2000. 'The 113 Committee and Trade Policy.' In *Committee Governance in the European Union*, eds. Thomas Christiansen and Emil Kirchner. Manchester: Manchester University Press, 98-114.
- Nērika Lizinska, 2014 Arbitration in Europe : Article 2 of the European Convention on International Commercial Arbitration. Syliff Research abroad journal , Feb, 2014 Page 1-3
- Jacqueline M. Nolan-Hale, (2012) Is Europe Headed Down the Primrose Path with Mandatory Mediation? North Carolina Journal of International Law and Commercial Regulation, Vol. 37, 2012 Fordham Law Legal Studies Research Paper No. 2010615

- Paul H Nitz (2013) how dangerous are Trade Disputes between EU and US for Transatlantic relations. School of Advanced International Studies John Hopkins University Journal Nov 2013 Page 1
- Petersmann, E. U. (2013). The establishment of a GATT office of legal affairs and the limits of 'public reason' in the GATT/WTO dispute settlement system.
- Peterson, John. 1997. "States, Societies and the European Union." *West European Politics* 20 (October): 1-23.
- Phillipe de Baere (2012) The Impact Of EU And WTO Dispute Settlement On EU Trade Defence Actions: Towards a More Level Playing Field(November 2012) 1-3
- Poletti, A., & De Bièvre, D. (2014). Political mobilization, veto players, and WTO litigation: explaining European Union responses in trade disputes. *Journal of European Public Policy*, (ahead-of-print), 1-18.
- Robinson, D., & Gibson, C. (2011). Governing Knowledge: Discourses and Tactics of the European Union in Trade-Related Intellectual Property Negotiations. *Antipode*, 43(5), 1883-1910.
- Smith, K. E. (2013). *European Union foreign policy in a changing world*. John Wiley & Sons.
- Vahl, Remco. 1997. *Leadership in Disguise. The Role of the European Commission in EC Decision-making on Agriculture in the Uruguay Round*. Brookfield: Aldershot.
- Van den Bossche, P., & Zdouc, W. (2013). *The law and policy of the World Trade Organization*. Cambridge University Press.
- Wallace, H., Pollack, M. A., & Young, A. R. (Eds.). (2010). *Policy-making in the European Union*. Oxford university press.
- Wallace, Helen and William Wallace. 2000. *Policy-Making in the European Union*. 4h ed. Oxford: Oxford University Press.
- Wallace, William. 2000. "Collective Governance." In *Policy-Making in the European Union*, eds. Helen Wallace and William Wallace. 4h ed. Oxford: Oxford University Press, 523-542.
- Woolcock, Stephen. 2000. "European Trade Policy" In *Policy-Making in the European Union*, eds.
- Helen Wallace and William Wallace. 4h ed. Oxford: Oxford University Press, 373-399.
- Wouters Jan, Idesbald Goddeesris, Bregt Natens , Filip Ciouritz, 2013 Some Critical Issues in EU India Free Trade Agreement Negotiations Leuven Centre for Global Governance Studies Working Paper No.102 –February 2013