DISPUTE SETTLEMENT UNDER ASEAN AND THE WTO:
A COMPARATIVE ANALYSIS

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INTRODUCTION

International Trading Regime, in recent past, has witnessed an immense change in the pattern of trade especially after the declaration of UNDD (United Nations Development Decade) that was hosted by UN, to cascade benefits of the trading regime, especially to developing and least-developed countries. The adoption of NEO (New International Economic Order) and further establishment of the World Trade Organization (WTO) are perceived as watermarks in the history of International trade. It gave boost to those economies which were not able to reap benefits because of prevalence of the Old International Economic Order. The WTO, being a ‘member driven and consensus based organization’, to a large extent has succeeded in introducing a firm rule based trading system giving predictability and certainty to the entire trading regime. A uniform framework has been created monitoring relationship between member countries, with different economic strengths, to exchange benefits. However, a bundle of trade concessions are provided to developing and least developed countries under the WTO based on the principle of ‘positive discrimination’ to realize the principle ‘TRADE AS AID’ for economic prosperity.


It has been observed, at the same time, that due to the emerging need for deeper integration coupled with other sectorial issues, innovative alternative models to conduct trade have emerged, suiting indigenous requirements of economies with different stages of development. In the World Trade Report, 2011 Pascal Lamy, the Director General of WTO has pointed out that there are more than 300 active Preferential Trading Agreements (PTAs) in force and the growth is ever increasing to form a long term tapestry of International trade relations.\(^3\) This observation is validated by current statistics published by WTO in 2016.\(^4\) Accordingly, the GATT/WTO received 625 notifications of RTAs as on 1\(^{st}\) February 2016, out of which 419 are in force.\(^5\) This unprecedented outburst of RTAs/PTAs, in such a short time, thrown open novel areas for discussion amongst analyst and critiques of the WTO in specific and multilateralism in general, as to its credibility. Many scholars perceived that growing prominence of PTAs would lead to demise of WTO and few may see it to be complementary and supplementary systemic adjustment.\(^6\) These divergent views are prompting an in-depth research and analysis to be done as to exact benefits and costs of each of the system of governance has in different domains.

The Association of South-East Asian Nations (ASEAN) is one of those arrangements made by South-East Asian countries to have trade and economic development on aggressive lines through regional preferential trading mode. The ASEAN has not only created an alternative structure for trade governance within the closed circuit but also instituted a sophisticated \textit{sui generis} dispute settlement mechanism to deal with controversies arising in relation to areas covered under the agreement.


\(^4\) Cf: https://www.wto.org/english/tratop_e/region_e/region_e.htm, visited on 5/5/16, by 05.30 am.

\(^5\) Ibid.

\(^6\) Supra, note 2.
With statistics in hand, it is proved that, countries have preferred Regional Preferential Trading Agreements (RPTA) to have trade over the multilateral model of the WTO. Contributing factors for such prevailing scenario could be many; however, this present article is restricting its scope to dispute settlement mechanism (DSM) as one of the reasons for such preferences. In this present article, for assessment and comparison, scope is restricted to DSM of WTO and of ASEAN. The ASEAN is chosen as representative sample from RPTAs because of its exhaustive dispute settlement mechanism. The effectiveness of the DSM of ASEAN will be checked against the established and working mechanism under the WTO.

This research problem while addressing the issue of effectiveness of DSM of ASEAN, when compared with that of the WTO has also tried to answer following questions like_ Is DSM under ASEAN playing a decisive role in incentivizing and thereby prompting countries to escape the multilateral forum of the WTO for redressal? What new measures and procedural safeguards are incorporated under the ASEAN, when compared to the WTO? Has the dispute settlement forum of WTO failed to redress the grievances of regional character because of Global Politics?

The responses given in this present research paper, to these questions will enable reader to understand qualitative similarities and differences both systems has and their success and failure in dealing with controversies arising out of these areas covered by agreement/s.

**BACKGROUND OF DSM UNDER THE WTO AND ASEAN:**

Historical development of the DSM under WTO can be traced back to the General Agreement on Tariff and Trade (GATT), 1947. It being the first multilateral arrangement, made to manage the aftermath of trinity of occurrences (First World

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7 *Supra*, note 3.
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War, Second World War and Great Depression) through trade, had incorporated Article XXII and XXIII to create DSM to resolve disputes arising out of implementation of provisions of GATT, 1947. It was understood by contracting parties that, an effective mechanism to settle disputes thus increases practical value of the commitments the signatories have undertaken in an international agreement.\(^8\) Accordingly, the confidence was shown by contracting parties to settle disputes through a strong rule based regulatory mechanism than power pockets determining fate of each and every conflict between contracting parties. The rudimentary mechanism engraved under Article XXIII used to be invoked only in case of nullification and impairment of benefits flowing to a contracting party. As the GATT has started functioning and regulating trade between member countries, many sub processes have evolved like the practice of appointment of panel has started because the process of negotiation between the members did not meet the test of objectivity and impartiality.\(^9\) This process of ‘taking away decision making’ from the hands of contracting parties and appointing ad-hoc panels made the process more judicious. It was witnessed that GATT, 1947 developed strength to strength with every Multilateral Trade Negotiation Rounds (MTNRs). The tariff was reduced with every MTNR, which led to the enhancement of trade as, trade is inversely proportional to tariff. And with increased trade, trade-complexities have also grown. To meet this ever evolving challenge many practices and procedures were developed based on certain customary practices.\(^10\) The process of evolution of DSM has seen four major water marks till the establishment of an automated system as a byproduct Uruguay Round. Firstly, the decision of 5th April 1966, which ultimately led to the adoption of special time bound adjudicatory procedure for developing countries, if a complaint had to be made against a developed country. This decision of contracting parties of adopting special rules for developing

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\(^9\) Anwarul Hoda, Dispute Settlement in WTO, Developing Countries and India, ICRIER Policy Series, No. 15, April 2012, New Delhi, pp. 3-6 available at [http://icrier.org/pdf/Policy_Series_No_15.pdf](http://icrier.org/pdf/Policy_Series_No_15.pdf) visited on 04th September, 2016, at 02.00 pm.

\(^10\) Ibid.
countries are well inspired by the decisions taken by United Nations to build confidence in the entire international governing regime of the Developing and LDCs by adopting UNDD and, subsequently, United Nations in the form of United Nations Conference on Trade and Development (UNCTAD) and United Nations Commission on International Trade Laws (UNCITRAL). Secondly, a major decision of 1979, during Tokyo Round of MTNR on an Understanding on Notification, Consultation, Dispute Settlement and Surveillance with an annexure giving an Agreed Description of the Customary Practice of the GATT in the field of Dispute Settlement. Thirdly, the decision on Dispute Settlement, contained in the Ministerial Declaration of 1982, and Fourthly, the decision on Dispute Settlement of 1984.

Even though the DSM has undergone a sea change, since its inception, still there were many serious defects observed as to the working of the system. Mainly those were observed in relation to ‘blocking vote’, which gave contracting parties an opportunity to obstruct procedure at many states. Uruguay Round, the eighth round of MTNR, gave an end to this abrupt growth of DSM under the GATT, 1947 and adopted a structured-automated-time bound mechanism to deal with disputes between contracting parties. However, while adopting new fallback procedure and concepts like ‘reverse consensus’ to counter blocking vote, old procedures were also retained. Thus, it can safely be concluded that, the DSM under WTO is an innovative outcome of discussion during Uruguay round by retaining some of the earlier procedures with reasonable changes of that of system of GATT, 1947.

Comparative analysis of evolution of DSM under the WTO erstwhile the GATT, 1947 with that of ASEAN, would give an opportunity to comprehend similarities and unique differences both systems had at different stages of evolution. These differences

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and similarities can never be restricted to manual theoretical comparisons, but even can qualitatively be understood at operational levels. Initial deductions can be made by comparing objective of ASEAN with those of GATT, 1947. The ASEAN was established mainly to promote peace and to have progress and prosperity in South East Asian region. Surprisingly, its founding document13 does not contain any specific segment concerning peaceful dispute settlement mechanism. However, a passing reference was made to it with an enabling provision to have committees for specific purposes. Whereas, the basic objective of GATT, 1947 was to have free, fair and predictable trade flow to create economic dependence between member countries through trade, to further avoid possibilities of war. The GATT, 1947 had reserved the dispute settlement procedure under Article XXII and XXIII.14

The first mention for the peaceful settlement of disputes is seen in the 1971 Zone of Peace, Freedom and Neutrality Declaration, which was adopted by foreign ministers at the special ASEAN Foreign Ministers Meeting in Kuala Lumpur, Malaysia.15 It merely recognized dispute settlement as one of the aims and objectives of the United Nations and no formal mechanism was brought to the forefront. In ASEAN Concord I, 1976, it was reiterated by member countries to settle intra-regional disputes through peaceful means because so much of emphasis was laid on ‘self-determination, sovereign equality and non-interference in internal affairs of the states’. The Treaty of Amity and Cooperation (TAC), 1976 has been pioneer in incorporating provisions governing ‘peaceful settlement of disputes’. Article 13 outlines the idea in which disputes are required to be resolved. It states that signatory states shall settle disputes between them by friendly negotiations. Further, the treaty has created a High Council composed of representatives at the ministerial level from each signatory country.16

14 Supra Note 8.
15 Ref: http://www.aseansec.org/1215.htm, visited on 10th June 2016, at 02.00 pm.
One of the roles specified is to mediate, when the initial negotiation between the countries breeds no result.\(^\text{17}\) Furthermore, the council was enabled to suggest proper means to settle disputes including good offices, mediation, inquiry or conciliation.\(^\text{18}\)

The dispute settlement procedure under TAC, 1976 seems to be inspired by the procedure as specified under GATT, 1947, to the extent that, in case of failure of initial consultation/negotiations between the disputing signatories, other signatories jointly may suggest some measures to resolve the same amicably. One major difference to be observed is, in case of GATT, 1947, Contracting Parties may suggest a solution to the dispute, whereas, under TAC, 1976 the high level council can also constitute itself into a committee of mediation, inquiry or conciliation.\(^\text{19}\) Further, the Protocol on Dispute Settlement Mechanism of 1996 has introduced many changes to the dispute settlement mechanism including composition of panel, appellate panel and time bound process. This reflects impact of WTO Dispute Settlement Mechanism on the ASEAN way of dealing with conflicts.

The evolution of dispute settlement under ASEAN regime has seen many improvements in a short span because of two major reasons. Firstly tariff reduction under MTNR of GATT, 1947 and later under the WTO and consequent increase of trade complexities. Secondly opportunities grew within ASEAN network to have trade because of cooperation and mutual understanding. To deal with new emerging issues, 34\(^\text{th}\) ASEAN Ministerial Meeting (AMM), 2001 had adopted ‘Rules of Procedure of High Council of the Treaty of Amity and Cooperation in Southeast Asia’. This was immediately followed by ASEAN Concord II in 2003, where the signatories have reaffirmed their commitment towards peaceful settlement of disputes.\(^\text{20}\) Adoption of ASEAN Security Community Plan of Action (ASCPA) in 2004 has been

\(^{17}\) Cf: Article 15 of the Treaty of Amity and Cooperation, 1976
\(^{18}\) Ibid.
\(^{19}\) Ibid.
witnessed as a major watermark in the history of ASEAN further to the Concord II, as it has in addition to political development and shaping and sharing of norms, embarked upon conflict prevention, conflict resolution and more importantly post-conflict peace building mechanism. In the same year for institutional strengthening, ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM) was adopted to replace the Protocol on Dispute Settlement Mechanism of 1996. The EDSM depicts a sophisticated, well-disciplined and time bound mechanism to resolve disputes of economic character under ASEAN regime. Central Pillar of EDSM is the mandatory panel and appellate panel procedure, if the other modes like mediation, good offices, etc., fails to resolve the controversy. Another key feature of this mechanism is the member states are allowed to seek recourse to other fora for settlement of dispute involving other member states.\(^{21}\) It further provides for surveillance of implementation of findings and recommendations,\(^ {22}\) compensation and suspension of concessions,\(^ {23}\) maximum timeframe\(^ {24}\) for the disposal of dispute under this protocol, etc.

Signing of ASEAN Charter of 2007 has achieved another landmark in strengthening institutional framework concerning dispute settlement mechanism. Chapter VIII of the said Charter is dedicated to the dispute settlement mechanism. The charter has reiterated the need to resolve dispute in a peaceful, timely manner through dialog, consultation and negotiation. The charter has reaffirmed that parties shall take recourse of good offices, conciliation or mediation in a timely manner and for this the Chairman of ASEAN or Secretary General of ASEAN shall accord greatest possible help.\(^ {25}\) It has further specified as to which instruments shall be applicable concerning interpretation and application of ASEAN and otherwise.\(^ {26}\) It was understood by ASEAN members that dispute settlement mechanism without effective


\(^{22}\) Ref: Article 15 of ASEAN Protocol on Enhanced Dispute Settlement Mechanism, 2004

\(^{23}\) Ref: Article 16 of ASEAN Protocol on Enhanced Dispute Settlement Mechanism, 2004

\(^{24}\) Ref: Article 18 of ASEAN Protocol on Enhanced Dispute Settlement Mechanism, 2004


implementation of its decisions may result in to a lip service, so the Secretary General of ASEAN was made responsible to ensure compliances of the findings, recommendations or decisions of the dispute settlement mechanism of ASEAN. Recently, Protocol to the ASEAN Charter on Dispute Settlement Mechanism of 2010 has laid down effective rules governing dispute settlement mechanism in all fields of ASEAN cooperation. It was well understood that there is already a process laid down under TAC and Protocol on Enhanced Dispute Settlement Mechanism. However, the intention was to cover disputes which are not covered by earlier instruments. This overall endeavor depicts a sophisticated rule based institutional approach to resolve timely disputes in an efficient manner to enhance confidence and credibility of the ASEAN, as an institution.

RESPONSE TO DISPUTE SETTLEMENT MECHANISM UNDER ASEAN:

Erstwhile discussion has highlighted the efforts of ASEAN in providing an advisory, consultative and adjudicatory mechanism to settle regional differences may that be related to trade or investment. The core question to be answered is, what has been the response of member countries towards a sui generis dispute settlement mechanism in resolving differences arising out of ASEAN cooperation? In other words, what has been the success of the Dispute Settlement Mechanism of ASEAN?

Surprisingly, there is not a single case being brought to this forum by any of the ASEAN member countries against other member countries under the DSM installed by ASEAN. It has put the entire institutional efforts in building a dispute settlement mechanism in question. However, at the same time it has distinctly be noted that same ASEAN countries have brought disputes, may they be related to trade or otherwise,

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against each other in forums like the WTO and ICJ. This leads to a reasonable suspicion on to the effectiveness of the ASEAN dispute settlement mechanism. In addition, many more questions may come to the forefront for the nonuse of the DSM under ASEAN like_ whether the legislative framework has substantive or procedural flaws leading to no response to the DSM of ASEAN? If yes, what is lacking when compared to the DSM of the WTO?

This present research would like to explore loop holes out of the DSM of ASEAN and will suggest changes to be made to make it more effective to gain confidence of the ASEAN member countries.

**ASSESSMENT OF DSM UNDER ASEAN:**

While doing assessment of the DSM under ASEAN and comparing it with the WTO, firstly, the area of concern is jurisdiction to be exercised on the disputes arising out of implementation or non-implementation of treaties and agreements covered under ASEAN. Article 1.3 of the Protocol on Enhanced Dispute Settlement, 2004, states as follows:

“The provisions of this protocol are without prejudice to the rights of the member states to seek recourse to other fora for the settlement of disputes involving other member states. A member state involved in dispute settlement can resort to other fora at any stage before a party has made a request to the SEOM to establish a panel pursuant to paragraph 1 Article 5 of this protocol.”

The above provision has created non-exclusive jurisdiction and member countries are allowed to look for other forum for resolution of disputes until a request for the setup of a panel is made to the SEOM. This is leading to confusion as to ‘choice of forum’, for dispute settlement, amongst member countries and ultimately resulting into

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29 Ibid.
choice of those forums which are well tested over the years. There is a substantive evidence to prove that ASEAN member countries have resorted to the DSM of the WTO for their disputes, instead of approaching ASEAN DSM.\textsuperscript{30} Even disputes have been rushed to International Court of Justice (ICJ) for resolution from ASEAN member countries.\textsuperscript{31} This deviant approach of member countries is reflecting negatively upon its mission of ‘One vision, One Identity, One Community’ and depicting trust deficit. It is not only undermining the DSM of ASEAN but, the entire endeavor of the community in bringing a rule based regulatory system. It has been argued by few scholars that the flexibility granted by ASEAN DSM in terms of ‘choice of fora’ appears to be useful as it may facilitate expedited solution in certain technical/practical matters.\textsuperscript{32}

Unlike ASEAN DSM, the WTO does not provide for ‘choice of fora’ for resolution of disputes arising out of covered agreements. Article 23 of WTO Dispute Settlement Understanding, to the exclusion of the other fora, obliges member countries to abide by rules and procedures set therein. This can, apparently, be understood as strength of WTO DSM and, at the same time weakness of the ASEAN DSM. If a new forum with a separate ‘closed’ model of governance has been adopted by a group of countries, to exchange benefits within, then the disputes arising out of the circuits shall be dealt within. And a reference to external fora for resolution of internal conflicts may result into disintegration and the purpose for which it has been created may get subverted. It can only be hoped that progressive move of globalization, need for greater integration and cooperation, and pressure on other fora may exert pressure on ASEAN member countries to resolve disputes within the ‘closed circuit’, instead dragging of solution from external agencies.

\textsuperscript{30} Ref: https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, visited on 23/06/2016, at 3.51 pm.
\textsuperscript{32} Paolo R Vergano, The ASEAN dispute settlement mechanism and its role in a rule based community: Overview and Critical Comparison, ASEAN International Economic Law Network Inaugural Conference, 30th June 2009, Pp. 78.
Second area of concern is relating to structure, functions and procedure adopted under the DSM under ASEAN. Comparison of structure, rights of member countries and procedure under DSM of WTO with that of ASEAN, may highlight reasons as to why preference given by ASM to DSM of WTO over ASEAN.

As referred before, there is trinity of instruments governing DSM under ASEAN. According to Article 24 (2) of ASEAN Charter, the Treaty of Amity and Cooperation may come into action when a dispute between members does not relate to interpretation or application of any of the ASEAN instrument. Secondly, according to Article 24 (3) of ASEAN Charter, all economic disputes are to be settled in accordance to the ASEAN Protocol on Enhanced Dispute Settlement Mechanism of 2004. Thirdly, the Protocol to the ASEAN Charter on Dispute Settlement Mechanism, 2010 has been signed by member countries to overcome the shortfall of earlier two instruments. This exponential increase in foras with a given limited sphere to operate might also be discouraging member countries to resort to DSM under ASEAN. Unlike, the DSM under WTO has a single unified mechanism to deal with all disputes arising out of covered agreements. It can really be appreciated about DSM of WTO that it actually has an automated mechanism to deal with multifarious issues arising out of bundle of agreements in several trading domains.

The Treaty of Amity and Cooperation had come in to operation in the year 1976 but since then it has not been used even a single time. Tracing historically, it was one of the pioneering initiatives under a regional trading agreement taken by ASEAN to have a Sui Generis system to resolve controversies. However, the DSM was modeled on that of GATT, 1947, which ensured that disputes are resolved through friendly negotiations, if fails, then there is a provision to draw political solution through High Council. This substantial copy of the DSM would have perhaps discouraged member countries from resorting to DSM under TAC, as the world has witnessed misuse DSM of GATT, 1947, which was ultimately proven to be an instrument of oppression of
Weaker countries. Another notable observation about TAC is that, the scope and jurisdiction of TAC to tackle disputes has been altered on several occasions. Initially, it was made to govern any dispute which is likely to disturb regional peace and security\textsuperscript{33} and later on further to the recommendations of ‘Eminent Persons Group’ in 2006 the scope was altered to address controversies which are unconnected with the interpretation and application of the ASEAN Charter and economic agreements.\textsuperscript{34}

The WTO when came into existence has replaced the entire regime set by GATT, 1947. It has not only changed the rules governing conduct of member countries in doing international trade but also the dispute settlement mechanism and compliance to the decisions given by DSB of WTO. In a short time the WTO has gained popularity because of its member driven and consensus based philosophy and an automated model for resolution of controversies arising out of covered agreements. This had influenced and encouraged ASEAN to adopt the identical model with similar processes. In addition, the Doha Ministerial Conference, 2001 has projected to the world at large, inordinate benefits member countries may have with enhanced standards for settlement of disputes. Accordingly, ASEAN had adopted the Protocol on Enhanced Dispute settlement Mechanism of 2004, which is modeled on the Dispute Settlement Mechanism of WTO.

It can be argued that, if the birth of ASEAN was to have divorce from multilateral model and to have another regional mechanism to meet native regional needs, then, the dispute settlement mechanism should also have had a tailor made approach than having replication of multilateral \textit{foras} for resolution of conflicts. There are many areas where the DSM of ASEAN has a similarity with that of DSM of WTO, if not identity, including a mandatory consultation procedure to be followed before a request is to be forwarded for the establishment of the panel for resolution of dispute.\textsuperscript{35} The

\textsuperscript{33}Ref: Article 13 of Treaty of Amity and Cooperation in Southeast Asia, 1976.
\textsuperscript{34}Ref: Article 24(1) of ASEAN Charter, 2010.
timeline mentioned for consultations under the both mechanism is identical i.e. 10 days for the requested party to respond; 30 days to enter into consultations and 60 days’ time frame is to conclude consultations.36

Another area of similarity is in relation to the functioning of Senior Economic Officials Meeting (SEOM) under the Protocol on Enhanced Dispute settlement Mechanism of 2004, with that of General Assembly which eventually acts as a Dispute Settlement Body under the WTO.37 The SEOM is authorized to establish panels, adopt panel and appellate body reports, maintain surveillance of implementation of findings and recommendations of panel and Appellate Body reports adopted by the SEOM and authorize suspension of the concessions and other obligations under the covered agreements.38

The provisions governing composition, powers and procedures to be adopted by panel and appellate panel during adjudication are also similar to that of DSM of WTO, barring the timelines specified for each stage. The WTO provides for a better flexibility by putting reasonable timelines for the resolution of disputes (of approximately of 16 months39), whereas, EDSM provides for a static and limited frame (of approximately 11 months40) which is considered from request for consultation till the adoption of report by respective authorities under both structures. This entire time frame includes identical steps for the resolution of disputes like appointment of panel, appellate panel, qualification and selection of panel, submissions by parties, deliberations before panel and appellate panel, submission of report, adoption of report, etc.

In comparison with the WTO, another disadvantage can be brought to the limelight i.e. in relation to funding to EDSM. Article 17 of the Protocol of Enhanced Dispute

36 Ibid.
38 Ibid.
39 Ref: Article 4, 7, 12 and 17 of Dispute Settlement Understanding of WTO.
Settlement Mechanism, 2004, makes a provision for the establishment of an ASEAN DSM fund by having contribution from all member countries in equal share. Further, it specifies that the expenses for resolution of disputes shall be shared by the parties at dispute. This perhaps stands as a threat for members to proceed with a dispute to EDSM. The WTO, on the other hand, under Art 8(11) has made a provision in the budget itself to cover expenses incurred for resolution of the dispute.

Now, the Protocol to the ASEAN Charter on Dispute Settlement Mechanism, 2010, (DSMP) needs to be assessed, it being the third instrument governing Dispute Settlement under ASEAN, to look for reasons as to why countries have such a low response to the Dispute Settlement Mechanism under ASEAN? According to Art 25 of ASEAN Charter and Art 2 DSMP, its scope is extended to deal with controversies relating to interpretation or application of the ASEAN Charter and other ASEAN instruments, which do not have any specific means to deal with disputes and are not dealt under TAC and the EDSM. It has recognized Arbitration, conciliation consultation, mediation and good offices as means to settle disputes.41 Even though this mechanism emphasizes on alternative modes for the resolution of controversies, still there are certain areas of concern. Firstly, the ‘consent’ of both the parties is required to resolve the dispute with the help of arbitration tribunal. If, on request to setup an arbitration tribunal, other party does not agree then, requesting party can go to ASEAN Coordinating Council (ACC) which can guide parties to go for mediation, conciliation, good offices or arbitration. If ACC fails to arrive at a decision to then the matter be taken to the ASEAN Summit for resolution of dispute.42 This suggests a political solution to a legal problem. It is weakness of the mechanism because it suggests extra-legal remedy for a legal problem. Finally, another major problem with this mechanism is of ratification by member countries, As per the data published on, ASEAN website, it is clear that all countries have not ratified DSMP so it cannot be

41 Ref: Article 5 to 8 of Protocol to the Charter on Dispute Settlement Mechanism, 2010.
42 Ref: Article 24 of ASEAN Charter.
enforcement until ratified. The WTO on the other hand has a mechanism which enables to resolve all those disputes within itself and this extralegal solution to legal problem is not provided.

CONCLUSION:

The developmental economics, a branch of economics, always insists on identifying new ways and means in carrying trade with other parts of the world to open new avenues for trade into new emerging trading domains. It further requires countries to base their relations on rules beyond the conventional multilateral system to have deeper integrations and greater benefits out of those alternative fora. The preferential trading agreements are one of those forums, identified especially to counter gigantic system created by the WTO, so as to have bypass to multilateral rules and share benefits inside the trading cocoon. The ASEAN is one of those examples, in which South East Asian Countries had come together to form a union to have stability in the region and resolve disputes arising out of economic transactions and otherwise, peacefully. Surprisingly, the mechanism adopted by ASEAN over four decades has not been used even a single time, rather there has been a trend observed to resolve disputes by resorting to the means other than those mentioned under ASEAN. There are many factors responsible for this, as in the initial phase ASEAN has adopted a mechanism for resolution of disputes under TAC, which was a substantial copy of the mechanism adopted under the GATT, 1947.

The WTO when came into existence has established an automated system to resolve disputes. The ASEAN, under the EDSM has replicated structurally and procedurally the Dispute Settlement Mechanism of that of the WTO. However, Economics Law analysts have vehemently criticized this substantial copying because of certain defects like that of limited time frames.

This present article has highlighted similarities and dissimilarities between the dispute settlement mechanism under the ASEAN and the WTO. It has been projected in the article that because of multiplication of the forums and opportunity given to the ASEAN countries to deal with their dispute outside the ASEAN network, disaster has caused as the mechanism has not been used ever. In addition to this there are many problems highlighted like countries under ASEAN prefer their disputes to be resolved by a tested mechanism than the one which has not been. There are financial, structural and enforcement related problems making DSM of ASEAN a weak mechanism when compared to the DSM of the WTO.

It can be suggest that, there has to be a unified and tailor made approach for the resolution of disputes instead of having different instruments conferred with different jurisdictions. In addition it can also be suggested that, the disputes arising out of the closed circuit of the ASEAN should get resolved within and recourse to external agencies shall not be allowed. The ASEAN may explore some new and effective modus operandi to resolve disputes instead to copying the existing framework.

Thus, there can be a hope that this alternative forums and the trade regulated thereby will benefit member countries without which the purpose behind creation of such alternative forums would be a waste. The system of WTO allowed these regional trading blocks to be flourished because its noble objective. On comparison it can safely be concluded that the WTO provides extra ordinary considerations which a developing or least developed country may not have. The entire focus should be on enhancing the strength of WTO instead of having these alternative models.