

# **TRADE LIBERALIZATION BETWEEN INDIA AND PAKISTAN: FOCUSING DIRECT AND INDIRECT BARRIERS**

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## **Introduction**

Many economic experts argue that trade liberalization is a win-win proposition for both Pakistan and India, especially for Pakistan since it is in need of growing export markets in order to utilize the potential industrial hubs present in the country and trade with India could significantly help achieve this goal. As for India, trade with Pakistan would not only be beneficial for itself, but would also facilitate its trade with Afghanistan, Iran, China and Central Asian states.<sup>(1)</sup> However, despite common history, language, culture and the acknowledgement of mutual trade benefits, trade liberalization between India and Pakistan has not been materialized. Both countries account for almost 92 per cent of South Asia's GDP, 85 per cent of South Asia's population, and 80 per cent of South Asia's surface area, whereas the percentage of India-Pakistan trade is only 20.<sup>(2)</sup>

There are some decisive direct trade barriers (DTBs) and indirect trade barriers (IDTBs) that stand in the way of rationalizing trade liberalization between the two states. Direct trade barriers include, for instance, lack of infrastructure to facilitate trade, non-tariff barriers (NTBs), technical barriers (TBs) to trade, negative or sensitive lists and positive list approach. While indirect trade barriers are those barriers that are not related to trade itself, yet have an impact on trade nonetheless. These include mutual trust deficit, apprehensions, image and perception issue, and contentious outstanding issues like Kashmir, Siachen, Sir Creek, the water issue and most importantly terrorism. Since inception, IDTBs have virtually been paralyzing bilateral trade. The causes of IDTBs are deeply embedded in history and in the popular psyche of Indian and Pakistani societies. Relationship between the two is largely guided

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by emotions and sentiments; the sense of a bitter past have solidified mutual perceptions to such an extent that any change in the status quo would be deemed politically suicidal for the governing elite. This study argues that unless and until IDTBs are addressed properly, trade liberalization would remain a pipe dream.

The study in hand provides a meta-analysis of the abovementioned DTBs and IDTBs. It also suggests ways to improve India-Pakistan trade relations by quantifying gains from the recent developments, such as the revival of trade talks in 2011 and Pakistan's decision to give the most-favoured nation (MFN) status to India. For this purpose, the paper is broadly divided into three sections. The first presents the historical background of trade liberalization between the two states. The second section discusses major impediments, classifying them into direct trade barriers and indirect trade barriers while the third section highlights recent developments and puts forward some practical measures to rationalize trade liberalization.

### **History of trade liberalization**

This section discusses the historical background of trade liberalization between India and Pakistan. It argues that the motivation for free trade derived from the successful experience of the European Union (EU). Later, the establishment of Association of Southeast Asian Nations (ASEAN) in 1967 further provided an impetus for economic cooperation. However for South Asia, the path towards liberalization has been tricky as compared to EU and ASEAN, despite the acknowledgment of free trade benefits. The major roadblock in regional integration is the enduring rivalry of India and Pakistan. Being dominant, they remain unable to serve as a model for smaller states in the region towards integration. Apart from India-Pakistan rivalry, there are some other significant indirect trade barriers which shall be discussed in the next section.

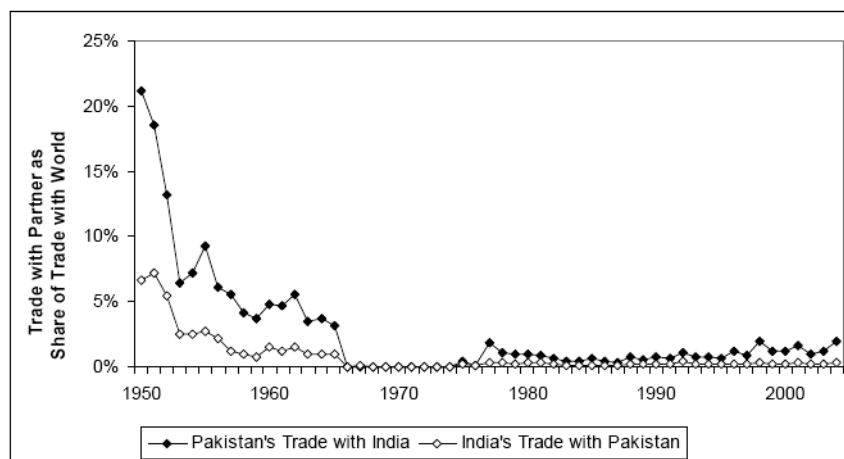
In the beginning, their bilateral trade relations were not sour. In fact, India was Pakistan's largest trade partner. There was plenty of trade and cross-border movements between the two countries. Bilateral trade was almost 70 per cent of their total foreign trade in 1947. Two years later, in 1949, Pakistan's decision to not devalue the rupee against sterling led to a decline in trade relations. Commonwealth countries including India imposed an embargo on Pakistan, as a result of which trade fell sharply from 70 per cent to around 18 per cent.<sup>(3)</sup>

However, in the 1950s trade slightly improved and the average percentage rose to around 20. In 1965, the India-Pakistan war severely dented the already fragile trade relations. Pakistan's trade with India dropped to zero from 21 per cent in early 1950s (see figure 1). The breakthrough in trade relations occurred in the eighties when Pakistan opened formal trade with India by introducing a positive list of forty-six items.<sup>(4)</sup> In 1983, a Joint Commission was formed which formally ratified an agreement to boost bilateral cooperation in the economic, industrial and commercial fields. Right after the ratification, around 40 items were allowed for import from India. Later, the number

increased to 584. On the other hand Pakistan allowed all kinds of export to India and maintained a positive list of around 687 items.

**Figure 1**

**India-Pakistan Bilateral Trade from 1950 to 2000**



Source: "The Challenges and Potentials of India-Pakistan Trade" World Bank, June 2007

The first formal step for trade liberalization was taken in the sixth summit of South Asian Association for Regional Cooperation (SAARC). This summit was held in Colombo in December 1991 and resulted in an approval for the establishment of an Inter-Governmental Group (IGG) to formulate an agreement to establish a SAARC Preferential Trading Arrangement (SAPTA) by the year 1997. Every member state seemed to be quite optimistic and enthusiastic to promote and sustain mutual trade and economic cooperation in the region through the exchange of concessions. Given the outright consensus, the SAPTA was signed on 11 April 1993 and made functional on 7 December 1995 prior to the date stipulated in Colombo summit.<sup>(5)</sup> This agreement was composed of 25 articles with a special focus to protect smaller states. (See Annex for details). Some highlights of the SAPTA agreement are as follows:

- overall reciprocity and mutuality of advantages so as to equitably benefit all contracting states, taking into account their respective level of economic and industrial development, the pattern of their external trade, and trade and tariff policies and systems;
- negotiation of tariff reform step by step, improved and extended in successive stages through periodic reviews;
- recognition of the special needs of the Least Developed Contracting States and agreement on concrete preferential measures in their favour; and
- inclusion of all products, manufactures and commodities in their raw, semi-processed and processed forms.<sup>(6)</sup>

After the establishment of SAPTA, rounds of trade negotiations began. In connection with SAPTA negotiations, the positive list was expanded by 81 items to a total of 768 items (these items correspond to around 1650 items at 8-digit level) and further to 773 items. Most of the new items included in the positive list were raw materials and chemical items required by the local industry. Items not covered in the list were not permissible for import from India. For its part, India had not imposed any formal restrictions on exports to or imports from Pakistan. However, there were a number of NTBs and TBs in order to protect domestic industries. It had maintained a list of “Sensitive” consumer goods, imports of which were regularly monitored with a view to taking prompt action to pre-empt or minimize disruption of local production by competing imports.<sup>(7)</sup>

The second step towards free trade was taken the same year when SAPTA entered into force in 1995. The realization for free trade area was made at the Sixteenth session of the Council of Ministers held in New Delhi from 18-19 December. The session resulted in setting up an Inter-Governmental Expert Group (IGEG) to identify the necessary steps for progressing towards free trade area. Another important turning point took place in 1995 when India granted MFN status to Pakistan following the establishment of World Trade Organization (WTO). Although Pakistan had not reciprocated in action, it nonetheless increased the positive list of goods that were to be legally imported from India.

In 1998, in the Tenth SAARC Summit held in Colombo, 29-31 July 1998, it was decided to set up a Committee of Experts (COE) to draft a comprehensive treaty framework for creating a free trade area within the region. Eventually, on 6 January 2004, the South Asian Free Trade Area (SAFTA) Agreement was signed at 12th SAARC Summit held in Islamabad. The Agreement entered into force on 1 January 2006, and the Trade Liberalization Programme commenced from 1<sup>st</sup> July 2006. Following the Agreement coming into force the SAFTA Ministerial Council (SMC) has been established comprising the commerce ministers of the member states. To assist the SMC, a SAFTA Committee of Experts (SCOE) has been formed.<sup>(8)</sup> This agreement is also composed of 25 articles. (see Annex II for details).

All member states pledged to eliminate trade barriers to allow free trade among them. In this regard, they are required to reduce their tariffs by 0-5 per cent in two phases by December 2015. In the first phase, non-Least Developed Countries (non-LDCs) — India, Pakistan and Sri Lanka — were supposed to scale down their tariff rates to 20 per cent in 2 years from January 2006. While LDCs, including Bangladesh, Nepal, Maldives and Bhutan, allowed the concession and were supposed to reduce tariffs to 30 per cent in the same period. In the second phase, non-LDCs were supposed to cut down their tariffs to 20 per cent or below 0-5 per cent in the period of five years starting from January 2009. There is a concession of one year for Sri Lanka and it is supposed to cut down tariffs in 6 years rather than five. For LDCs, they are supposed to reduce trade tariffs from 30 per cent or below to 0-5 per cent within eight years.<sup>(9)</sup> (see table 1) Under SAFTA, all member states are allowed to make a

sensitive list for protecting their interests. However, it is subject to a maximum cap to be mutually agreed and supposed to review after every four years or maybe earlier.

**Table 1**

**Tariff reductions under SAFTA**

Countries	Existing tariff rate	Proposed SAFTA reduction	Timeline
<b>First Phase</b>			
India, Pakistan, Sri Lanka	> 20%	Reduce to 20%	2 years
	< 20%	Further annual reduction	2 years
Bangladesh, Bhutan, Maldives, Nepal	> 30%	Reduce to 30%	2 years
	< 30%	Further annual reduction	2 years
<b>Second Phase</b>			
India, Pakistan, Sri Lanka	≤ 20%	Reduce to 0–5%	2 years
Bangladesh, Bhutan, Maldives, Nepal	≤ 30%	Reduce to 0–5%	3 years (primary products)
			5 years (other products)

**Source:** "Implications of Liberalization of Trade and Investment with India", chapter 2, p.59, Research Department, State Bank of Pakistan, 2006.

Since April 2006, a total ten meetings of SMC and SCOE have been held. Among these, eight were the usual annual meetings while the other two were special meetings. One was on 23 September 2011 and the second one recently called in Colombo 2013. Apart from this, a total of seven meetings of SAFTA ministerial Council have been held so far.

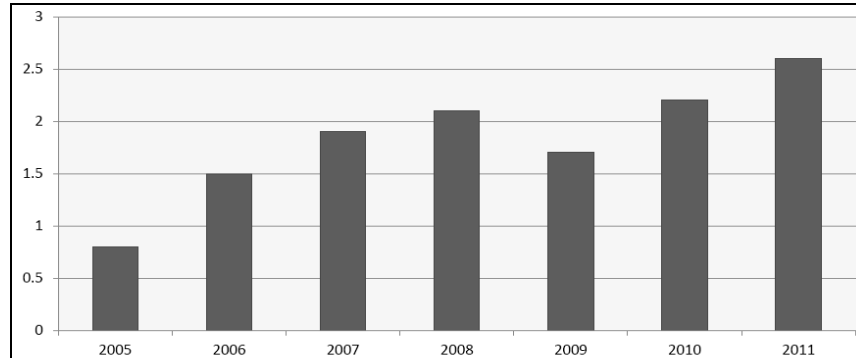
Even after the enthusiastic beginning of SAFTA, the trade between India and Pakistan could not touch the 3 billion US dollar mark. Bilateral trade potential is estimated to be \$19.8 billion, 10 times the current level. However, with the initiation of the Composite Dialogue process in 2004, bilateral trade improved as compared to the previous three years when political tensions were high. From 2005 to 2011, bilateral trade has been around \$2 billion on average (see Figure 2 & 3). Pakistan accounts for around 0.5 per cent of India's trade and India on the other hand accounts for about 3 per cent of Pakistan's trade. The irony is that a large portion of India's export potential (around 58 per cent) is on the products that are in Pakistan's negative list or sensitive list for India under the SAFTA agreement. Similarly, India's sensitive list applicable for Pakistan contains 32 per cent of India's import potential from Pakistan.<sup>(10)</sup>

The biggest upset in bilateral trade relations happened in 2008, reversing the progress achieved following SAFTA. On 26 November 2008, terrorists attacked Mumbai city, killing around 100 people and leaving 200 wounded. India claimed that the terrorists belonged to Lashkar-e-Taiba, a Pakistan-based militant organization. For its part, Pakistan assured its complete cooperation in the Mumbai attack case to bring terrorists to justice, but demanded evidence of involvement. Just one month before the Mumbai attacks, both states permitted trade and travel across the Line of Control in Jammu and

Kashmir. This sad episode resulted in the cessation of the composite dialogue. However, after a three-year lull in bilateral relations, the dialogue process resumed once again in 2011.

**Figure 2**

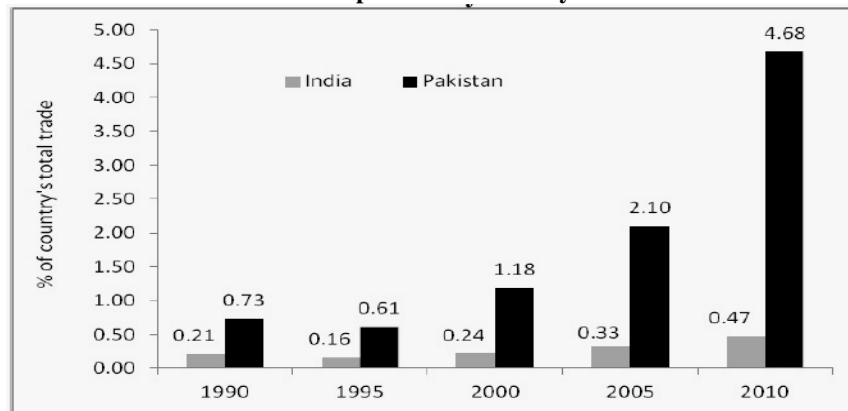
Bilateral trade between India and Pakistan in billion US \$



**Source:** Mohsin Khan, "India-Pakistan Trade Relations: A New Beginning", New America Foundation, Washington DC, January 2013.

**Figure 3**

Bilateral trade as per cent of country's total trade



**Source:** Selim Raihan and Prabir De, "India-Pakistan Economic Cooperation: Implications for Regional Integration in South Asia," Commonwealth Secretariat, April 2013

During 2011, several high-level meetings were held aimed at improving bilateral trade. At the 17th SAARC summit in November 2011, the prime ministers of India and Pakistan discussed trade issues. On 2 November, Pakistan's announcement giving MFN status to India was a welcome development. During the Indian commerce minister's visit to Pakistan, the cabinet announced that MFN status to India would become operative in 2013. For a quick start, provisionally a negative list of about 1200 items replaced the positive list of 1946 items. It was decided to replace the negative list further by a smaller negative list in 2013. Currently Pakistan has just 1209 items on the

negative list out of 8,000 items. The remaining 6,800 items are tradable, which is a quite significant number as compared to the 2,000 items of the previous list. However, granting MFN status to India remains conditional upon the removal of NTBs on Pakistani goods, because the export community in Pakistan claims that even after the MFN status, the NTBs would continue to dominate.

The year 2012 has also been favourable for both India and Pakistan. Many positive developments have taken place in this year. Pakistan and India signed three agreements on the following: the redressal of trade grievances; mutual recognition and customs cooperation to facilitate bilateral business mechanism, and on easing issues related to certification, licensing and lab tests. These agreements were signed at the 7<sup>th</sup> round of Pakistan-India commerce secretary-level talks on economic and commercial cooperation. Both sides agreed to reduce the sensitive list to 100 by the year 2017 under SAFTA agreement. In this regard, India went ahead and pledged to reduce the sensitive list by 30 per cent till December 2012. Pakistan agreed to lift restriction on trade via Wagah-Atari land route for all goods by the end of October 2012. Further, they decided to explore the possibilities of opening the Munabao-Khokhrapar land route for trade.<sup>(11)</sup> Despite strong commitments from both sides, the MFN status is still pending and the issues under NTBs have not yet been addressed. On the other hand, outstanding conflicts between the two neighbours are making trade liberalization more vulnerable. The next section shall discuss these impediments in detail.

### **Direct and indirect trade barriers in liberalization of trade**

This section classifies major impediments in trade liberalization into two categories: direct trade barriers and indirect trade barriers. It argues that direct trade barriers like NTBs, TBs, and financial and Customs problems can be sorted out through mutually agreed measures. However, indirect trade barriers like trust-deficit, apprehensions, image and perception issue, and outstanding contentious issues require a people-centric approach. These barriers are deeply embedded in history. Genuine efforts towards the resolution of outstanding issues between India and Pakistan like Kashmir, Siachen Glacier, Sir Creek, the water issue and terrorism would help in building trust and in improving the problem of image and perception. Spoilers from both sides often exploit outstanding conflicts to create a negative image and disrupt the normalization process. This study argues that until trust-deficit, the issue of image and perception, and outstanding contentions stay unresolved trade liberalization would remain a pipedream.

Before going into detail, what is worth mentioning here is the trade structure between India and Pakistan. Bilateral trade is taking place via three routes: formal trade, illegal trade and trade via third countries. Formal trade means the official trade which is marginal. Illegal trade takes place through smuggling via the porous borders of India, Pakistan and Afghanistan, while trade via third countries mainly occurs through Dubai and Singapore since both have free ports and accommodate the traders of both India and Pakistan.<sup>(12)</sup>

According to the Federation of Indian Chambers of Commerce and Industry, formal trade between India and Pakistan currently stands at \$2.7 billion, rising from \$144 million in 2001, while informal trade via a third country is estimated at \$10 billion. Under heightened political tensions, official trade suffers more because of the closure of official trade routes. However, even in normal circumstances official trade faces a number of direct trade barriers.

These barriers broadly include tariff barriers, non-tariff barriers, technical barriers, finance measures and quality-control measures. Tariff barriers comprise customs duties, special additional duties and countervailing duties. NTBs are stringent visa regime, trade distortion subsidies, overland transportation limitations, air travel restrictions, sea transportation restrictions, transit restrictions, port of call restrictions, and railway carriage restrictions. Finance measures include cumbersome payment system, restrictive official foreign exchange allocation, regulations concerning terms of trade for import payments, non-acceptance of letter of credit, high commission of foreign banks offering letter of credit and lack of bank branches. Quality control measures are licence with no specific ex-ante criteria, licence for selected importers and sanitary and phytosanitary measures. Finally, technical barriers include marking requirements, labelling requirements, testing, inspection and quarantine requirements, and pre-shipment inspection/certificate acquisition.<sup>(13)</sup>

Nisha Taneja's<sup>(14)</sup> study on non-tariffs barriers places the above-mentioned direct trade barriers into the category of non-tariff barriers. These NTBs are of six types, namely positive list approach, trade facilitation and customs procedures, technical barriers to trade and sanitary and phytosanitary measures, financial measures, para-tariff measures and visas. According to this study, the most apparent barrier in bilateral trade is the positive list approach. Over the years, this approach has expanded gradually but traders from both sides face many problems in the application of this policy measure. The study argues that the most well-documented problem is that "several goods not on the positive list are exported to Pakistan through Dubai. This has been a traditional practice and is admitted by traders in both countries. Using the indirect route leads to high transport costs for traders. Transport costs on the Mumbai-Dubai-Karachi route are 1.4 to 1.7 times more than on the direct Mumbai-Karachi route."<sup>(15)</sup> A second barrier exists in the form of trade facilitation and customs procedures.

Trade between India and Pakistan takes place through sea, rail, air and land routes. There are four land routes between them: Wagah-Attari in Punjab, Munabao-Khokhrapar between Pakistani Sindh and Indian Rajasthan, Rawalakot-Poonch and Muzaffarabad-Srinagar in Kashmir. Among them, Munabao-Khokhrapar land route is closed and Rawalakot-Poonch and Muzaffarabad-Srinagar routes are vulnerable because of their location in the disputed territory of Kashmir. Therefore, the Wagah-Attari border in Punjab is the only point carrying a load of overwhelming trade between India and Pakistan. The weak land route infrastructure and bilateral restrictive protocols lead to heavy costs for traders from both sides. In times of political friction, it becomes impossible to pass through land routes. The number of border crossings



decreases with the increase in the intensity of conflict. Moreover, there is no uniform policy for all land routes. Each route has its own political context and hence a different policy. For instance, trade policy for land routes in Punjab is totally different from those in Kashmir.

Similarly, there is only one railway route at the Wagah-Attari border. Since the capacity of the passenger train, Samjhauta Express, is very limited, the products are usually moved by freight cars or interchange carriages attached to this train. The importance of trade via train route has declined as compared to sea and land routes. The reason behind this are the poor quality of rolling stock and restrictions on the type of freight cars. This interchange train only moves between Amritsar (India) and Lahore (Pakistan) through the Attari railway station. Goods from India reach Amritsar on Indian rail carriages and are then unloaded and then re-loaded onto Pakistani freight cars or trucks. It not only creates a big hassle but is also time-consuming and more costly. Moreover, traders from the eastern side of India, for instances Kolkata, face many problems in trading via railway through Wagah-Attari border because they lack access to necessary information. Hence, shipments first go to Colombo, Sri Lanka, or Singapore via sea and then reach Pakistan through Karachi.<sup>(16)</sup>

Similarly, Pakistan does not allow the import of cotton via rail route as per Plant Quarantine Rule that allows import through Karachi port only. There are many textile mills in Lahore and Faisalabad but the Indian cotton is first transported to Mumbai and then to Karachi via the sea route and finally reaches Lahore and Faisalabad through road. There is only a sea route that remains operational. However, trade takes place under restrictive protocols.

Another issue under trade facilitation is that both countries do not allow transit facilitation to each other. For instance, Pakistan provides transit facility to Afghan goods to be transported to India but restricts Indian goods to be transported through its territory to Afghanistan. Similarly, India does not provide transit facility to Pakistan for having trade with Bangladesh and Nepal.<sup>(17)</sup> Thirdly, many traders have to go through cumbersome procedures, customs clearance, rules of origins certification, valuation and clearance of goods.

Fourthly, there are issues under the sanitary and phytosanitary measures and technical barriers to trade. WTO allows such measures to maintain standards that would ensure safety and protect human and animal life. Both states have not adopted any uniform method to test goods; they follow a domestic institutional framework. There are 24 standard setting bodies in India and only one in Pakistan. With the large number of bodies operating in India, it is very difficult to identify the national standard. Moreover, implementation of standard measures are very stringent and meticulous. Currently, Pakistan imposes mandatory standards for 46 items and India for 68 items. For instance, in the case of Pakistan, samples of leather items and melamine products are sent to laboratories located far from the port of entry point before being exported to India. In the case of textiles, traders are required to obtain pre-shipment certificate from their own country. However, this is rejected by Indian authorities. In pharmaceuticals, the registration process with Central Drug

Standard Control Organization (CDSCO) in India is hectic and time consuming. Similarly, for the import of agricultural products from Pakistan, Indian traders are required to obtain phytosanitary certificate through a process that takes several days. In the case of the import of fresh mangoes, it is reported that a test shipment from Pakistan is often destroyed at the Indian port on the ground that the sanitary and phytosanitary norms for fresh mangoes were not laid down by India's Ministry of Agriculture.

There are some irregularities in the financial measures for bilateral trade. Shipments can only move with a confirmed letter of credit (LC). However, Taneja's study reveals that many firms have traded without confirmed LCs. Traders from Pakistan argue that Indian banks do not recognize LCs from any Pakistani bank and the process of confirmation takes several days. It takes even more time when discrepancies are found in LCs. Another NTB is related to para-tariff measures. Both India and Pakistan impose these measures in addition to basic customs duties that increase the cost of importing items. For instance, Pakistan imposes a sales tax of 15 per cent and a withholding tax of 6 per cent. For its part, India imposes a countervailing duty of 16.3 per cent on many products, and a special countervailing duty of 6 per cent. Ishrat Hussain<sup>(18)</sup> has also pointed out that Indian para-tariff measures increase the existing tariff rates from an average 12 per cent of customs duty to 25.6 per cent. Moreover, once composite taxes are imposed on certain textiles and clothing, the average protection increases from 9.6 to 16.2 per cent for clothing. India's tariff regime also promotes tariff escalation as semi-manufactures attract lower rates compared to finished goods.<sup>(19)</sup> Besides para-tariffs, both states have high tariffs on textile and agriculture products to protect their respective industries. They follow very restrictive policies because both states enjoy comparative advantages in this sector.

Finally, there is the issue of visa procurement. Traders from both sides face many problems in obtaining visas. First, both states grant city-specific visa with a limited period of stay. This is a major barrier that prohibits traders from finding new markets and partnerships. There is requirement of police reporting on entry and exit. Moreover, there is lack of clarity on what grounds visas are granted or rejected. For trade in engineering and chemical sectors, both sides require a visa for technical service that is even more complicated than normal visa.

Selim Raihan<sup>(20)</sup> and Prabir De<sup>(21)</sup> have also pointed out some anti-trade measures in the bilateral trade between India and Pakistan which are given below. Another study conducted by Raihan, De and Ejaz Ghani<sup>(22)</sup> in 2012 highlighted more or less the same NTBs. (see box 1).

- Limited number of items allowed to be transported through rail and land route with specific timings for the opening.
- No warehousing/storage facilities available.
- Poor quality land route network with little regional road linkages
- Rail networks between ports and markets are often missing, putting extra burden on already inadequate road networks.

- Limited number of railway wagons and their occasional unavailability.
- Fixed time for loading and unloading of goods and interchange of goods trains between the two countries add to high transaction time and cost of trade.
- Strict quality testing and certification measures for goods.
- Information flow on trade-related matters between the two countries is particularly weak, thereby generating enormous problems.
- Stringent and restrictive measures for obtaining visa from both sides.
- Both states grant only city-specific visa with limited period of stay.
- Requirement of police reporting on arrival and departure, requirement of exit from the port of entry.
- Lack of criterion for rejection of visa, granting mode-specific visa, disregarding requested date of entry, and delay in granting visa.
- Both sides do not provide transit facilities to each other. Transit of Pakistani goods through India to Bangladesh and Nepal is prohibited. Pakistan also places restrictions on transit trade from India to Afghanistan.
- Mismatch exists between the Harmonized System (HS) classification of goods. Indian 8-digit HS classification sometimes used on the Pakistani 6-digit classification of items on the positive list, giving customs officials room to allow entry based on discretion.
- Inefficient payment system under Asian Clearing Union that leads to significant delays, especially when letters of credit need to be confirmed, which can take up to a month.
- Lack of redressal mechanisms for grievances.<sup>(23)</sup>

### Box 1

#### List of Non-Tariff Barriers

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|---|
| <ul style="list-style-type: none"> <li>• <i>Payment procedures:</i> Some Indian banks do not recognize LCs from all Pakistan banks and vice versa.</li> <li>• <i>Visa regime:</i> Still very restrictive on both sides. The visa regime is unpredictable, city specific single-entry and limited to very few days stays.</li> <li>• <i>Air travel:</i> Very limited to a few flights. Capital cities are not connected by direct flights.</li> <li>• <i>Road and rail travel:</i> Limited traffic, lack of railway wagons and locomotives, rail wagons carrying goods should return empty.</li> </ul> |
|---|

- *Sea travel:* Ships should touch a third country port (e.g. Dubai or Singapore) before delivering import goods except limited port of call between Karachi in Pakistan and Nava Sheva in India.
- *Services/IT:* Heavy restrictions limited professional exchanges/cooperation.
- *Services/Banking:* Bank branches are not allowed and export/imports should be made through a third country.
- *Standards:* The Bureau of Indian Standards (BIS) requires a certificate for cement, whereas it takes 6 months (3 weeks in theory) to clear certification. Pakistani labs reports for complying with certification requirements for fabrics and garments are often not accepted in India. Finished leather from Pakistan requires an additional certification from the Indian veterinary department.
- *Infrastructure:* A 10-hour window is given to Indian importers to unload/load. Customs clear and reload, but this is hardly accomplished. Warehousing facilities on both sides of the border are inadequate. Behind the border facilities are very poor. For example, a major part of the road linking Attari with Panipat on India's National Highway 1 is narrow.
- *Trade logistics:* Goods move by air, sea, and rail between India and Pakistan. While road routes for trade are non-existent, rail and air connections between the two countries have been erratic. Interchange between Pakistan and Indian railways takes place only on Sunday. There are restrictions on mode of transport in export goods. For example, cement export to India is allowed only by train, and export of large quantities through train is not possible as the frequency of trains running between India and Pakistan is very low. There are large port congestions high port and demurrage charges, cumbersome paper works, and generally more issues of trade and transport facilitation in Pakistan.
- *Transit:* Although India and Pakistan are signatories of GATT Article V, they do not extend freedom of transit to each other as well as international traffic in transit.
- *Testing laboratories at border:* Testing laboratories for trade in agriculture, processed food chemicals, garments etc. are not available at both sides of the Attari-Wagah border

**Source:** Selim Raihan and Prabir De, "India-Pakistan Economic Cooperation: Implications for Regional Integration in South Asia", Commonwealth Secretariat, April 2013

Ishrat Hussain has also highlighted some NTBs in his paper, "Managing Trade between India and Pakistan." He states that the business community in Pakistan has strong reservations about these NTBs. The business community claims that such NTBs are Pakistan-specific. The NTBs are as follows:

- Strict sanitary and phyto-sanitary measures
- Technical barriers to trade
- Quotas and Import licences on 600 items
- Aggressive use of safeguards and anti-dumping measures
- Frequent invocation of countervailing duties
- Stringent licence requirements from the Bureau of Indian Standards
- Multiple customs clearance requirements
- Non-standard customs valuation methodology
- Stringent and lengthy certification requirements
- Restrictions on movement of goods through railways.
- Complicated and restrictive visa requirements
- Long dwell times at ports and border points
- Transit restrictions
- Absence of testing labs at the border crossing points
- State governments' restrictions on use, sale, and consumption of certain goods
- Uncertainty about inter-state movement of goods
- Non-acceptance of letters of credit issued by Pakistani banks

Both states continue to use tariff and non-tariff barriers to protect their industry despite reforms. India is ranked 115<sup>th</sup> among 125 countries on World Bank's Trade Tariff Restrictiveness Index (TTRI) while Pakistan stands at 102<sup>nd</sup> place. India's trade regime is even more restrictive as compared to other emerging economies like Brazil, China, Mexico, or in comparison to neighbouring states in South Asia. Moreover, India's ranking on "ease of doing business" indicators is quite low, standing at 122<sup>nd</sup> out of 178 countries whereas Pakistan ranks 77<sup>th</sup>.<sup>(24)</sup>

After having discussed direct trade barriers to Pakistan-India trade, the following study highlights some indirect trade barriers. As mentioned earlier, these barriers are deeply embedded in the history of inter-state relations. Both states have fought four wars and faced many ups and downs in their relations. Since independence, trade relations have often been damaged by sporadically heightened political tensions between India and Pakistan. Memories of the past have created a trust deficit which is an indirect barrier in the normalization of trade. Both states need to make sure that they would not allow political tensions to disrupt the normalization of bilateral trade.

If we look back, right from the first day India-Pakistan relations never ran smoothly. There were problems: the question of minorities, evacuee property, sharing of assets, division of military stores, Kashmir, Hyderabad and

Junagarh, and then later, the 1965 and 1971 wars — the list is endless. A number of promising agreements were made, such as the Tashkent and Simla agreements and the Lahore declaration. Yet none of these agreements, nor the Vajpayee bus yatra to Lahore could improve relations between the two rivals in the long run. Even after more than 60 years of their emergence as two independent states, the problem remains the same — of ‘image’ and ‘perception’. Both states still have their reservations and continue to regard each other as the ‘archenemy’. This has been a great hurdle in achieving peace.

Kashmir is the most intractable conflict between them, and it still remains unresolved even after more than 60 years. For Pakistan, Kashmir is the “core” issue and the root cause of bitterness in its relations with India. Pakistan maintains that Kashmir is a disputed territory and its accession to India in 1947 was invalid, so it is an unfinished agenda of partition. In Pakistan’s eyes, its accession to India without consulting the Muslim population of the state was null and void because this decision ignored the partition principles, whereby demographic considerations and geographical location were taken into account. What Pakistan wanted foremost was to press its claim on Kashmir. For India, Kashmir is an *atoot ang* (integral part) of India. In a speech to the Constituent Assembly on 25 November 1947, prime minister Jawaharlal Nehru justified it in these words: “We were of course vitally interested in the decision that the state would take. Kashmir, because of her geographical position with her frontiers marching with three countries, namely the Soviet Union, China and Afghanistan, is intimately concerned with the security and international contacts of India. Economically also Kashmir is intimately related to India.”<sup>(25)</sup> These claims still continue to dominate the Kashmir saga.

Parallel to Kashmir, the Siachen glacier issue, Sir Creek issue, the water issue and terrorism are creating hurdles in normalization of relations between India and Pakistan. Among these Siachen is the most costly issue. Both states have paid a huge cost in terms of human, economic and environmental losses.<sup>(26)</sup> Pakistan is faced with an acute water shortage and is therefore concerned over the Indian decision to construct several new hydro projects on rivers in occupied Kashmir that flow to Pakistan. There is an alarming situation for Pakistan that India can divert or store a large quantity of water that is essential for agriculture as well as the livelihood of farmers in Pakistan. The water issue is expected to become more acute in future with climate changes affecting the flow of rivers.<sup>(27)</sup> These indirect trade barriers profoundly affect trade relations. There are a number of instances in the history of India-Pakistan relations when trade had to suffer. For instance, tensions over Kashmir often led to the closure of trade across the Line of Control. Similarly, heightening of tensions in any outstanding dispute, whether it is the water issue, the Siachen issue, or terrorist activity, always takes bilateral trade to a dead end. So, parallel to normalization in trade, there is a dire need to focus on resolving all contentious issues. Genuine efforts towards resolution of the above-mentioned bilateral issues and increasing people-to-people contacts would help in building trust and improving image and perception towards each other. The following

pages probe potential from recent developments and suggest ways to further trade liberalization between India and Pakistan.

### **The way forward**

The resumption of the composite dialogue process in 2011 provided hope for betterment in bilateral trade. Moreover, Pakistani government's decision to grant MFN status to India is a major breakthrough. Today, 6,800 out of a total 8,000 items can be imported from India. This is a significant change as compared to the past when only 2,000 items were being imported from India. Pakistan's exports to India during April-December 2012 have increased by 66 per cent to \$460 million, while Indian exports to Pakistan rose by 16 per cent.<sup>(28)</sup> India has also reduced the number of prohibited items for import from Pakistan by 30 per cent.

In 2012, Pakistan and India signed three agreements for redressal of trade grievances, mutual recognition and customs cooperation to facilitate bilateral business mechanism and to resolve issues related to certification, licensing, and lab tests. The same year, on 14 December, they signed an agreement to ease tough visa restrictions for travellers. In addition, both sides also agreed to reduce the sensitive list to 100 items by the year 2017 under the SAFTA agreement. Furthermore, the feasibility of opening the Munabao-Khokhrapar border and a second gate at Wagah-Attari land route is being considered. This would increase the number of trucks crossing the border to 500-600 daily from 150-200 at present. Moreover, both sides have agreed on grid-connectivity between Amritsar and Lahore, which would pave the way for trade of up to 500MW of power. Biswajit Dhar, Director-General at Research and Information System for Developing Countries, says that "the positive spinoff for normalisation of trade is enormous. Pakistan has given signals and India now needs to take the initiative. Normalisation of bilateral trade relations will help in putting much of the political bickering on the backburner."<sup>(29)</sup>

In order to reap advantages from the current developments, Ishrat Hussain suggests that Pakistan should not delay granting MFN status to India. On the other hand, India should reduce its tariffs on agriculture, textile, and other goods that are in Pakistan's interest. Moreover, both states should focus on phasing out the sensitive list under the SAFTA within the next few years. Mohsin Khan argues that the current environment is conducive for furthering the dream of liberalization. He highlights some recommendations necessary for the promotion of bilateral trade, which are as follows:

- Need for agreement on non-tariff barriers (NTBs). India time and again argued that its NTBs were non-discriminatory and applied equally to all countries. Pakistani officials and exporters argue that the NTBs are applied selectively and in an ad hoc manner against Pakistani exports to India. The two countries will need to discuss specific NTBs, bringing in the experience of exporters, and reach a mutually acceptable resolution over which NTBs need to be eliminated or changed.

- Need to develop and implement a dispute resolution framework. At present, many Pakistani business people feel they have limited recourse in settling disputes with their Indian counterparts. While both India and Pakistan have access to the dispute settlement mechanisms of the WTO and SAFTA, and the Redressal of Trade Grievances Agreement allowing government-to-government negotiations, there is still room for an informal private party dispute settlement mechanism. Such a framework could provide a fast-track process to enable aggrieved industries, exporters, and importers to efficiently resolve trade disputes that are relatively small or minor. This informal dispute resolution method could be administered by the newly created India-Pakistan Joint Chamber of Commerce.
- Need to develop physical infrastructure to facilitate bilateral trade. The quality of the road network is poor with few regional linkages, and rail networks between ports and markets are limited. There is only one main border crossing at Attari-Wagah and it lacks adequate customs and warehousing facilities. Pakistani ports need to be expanded to handle the expected increase in cargo. Without significant improvements in infrastructure, the goal of doubling or tripling trade in the next few years could not be realized. It is in the interest of both India and Pakistan to identify the physical bottlenecks and work together to reduce or eliminate them, possibly through public-private partnerships, which have been successful in developing infrastructure in other countries.
- Need to open up trade in services. Although neither India nor Pakistan explicitly restricts services trade, at present it is virtually nonexistent. The reason is the restrictions placed on foreign nationals entering and providing services in the Indian market. In response, Pakistan puts similar restrictions in place, even though they have no legal basis. The potential for the services trade, including, for example, information technology, financial services, medical services, education, and tourism, appears to be substantial. There is now a tentative agreement on cross-border banking, with each country being permitted to open bank branches in the other starting in 2013. Meanwhile, the partial easing of visa restrictions should allow for larger tourist flows. Similar agreements are needed on student exchanges and travel for medical treatment. India has first-rate technical schools and medical facilities that are as yet unavailable to Pakistanis.<sup>(30)</sup>

In addition to the above-mentioned measures, both states need to focus

on:

- Relinquishing the positive list approach to clear way for free trade between them. After resumption of dialogue, there has been a gradual increase in the positive list. However, there are



many products of both states' interests that are still not included in the positive list

- Improving infrastructure of transportation links
- Easing the bilateral restrictive protocols on rail, road and sea routes
- Modernizing customs procedures and improving facilitations at border.
- Making sure electronic data interchange (EDI) facilities at border expedite shipment movements
- Easing application of standards for goods since both states have their own rigorous domestic standards. India, in particular, needs to adopt a uniform standard system; currently it has more than 20 standard authorities both at the centre and the state level. However, Pakistan has a single authority
- Increasing lab facilities at land border points
- Improving efficiency of Asian Clearance System according to the changing needs
- Opening bank branches on a mutual basis. (Both states had already signed an agreement for opening bank branches but this agreement has not materialized yet.)
- Reviewing para-tariff measures
- Reviving the composite dialogue 2006 agenda which included resumption of rail service between Khokhrapar and Monabao, bus service between Srinagar and Muzaffarabad, religious visits to Lahore and Nankana Sahib, a new shipping protocol, deregulation of air services, and joint registration of Basmati rice.
- Easing the visa regime

Last but not the least, India and Pakistan direly need to address their outstanding issues. Both states must not allow their political differences to disrupt trade normalization. The recent dialogue process has resulted in workable solutions for the above-mentioned areas. For instance, Pakistan and India signed three agreements on redressal of trade grievances, mutual recognition and customs cooperation to facilitate bilateral business mechanism and ease issues related to certification, licensing, and lab tests and relaxing the visa regime. However, there has not been any progress towards resolving contentious issues between India and Pakistan.

Terrorism is the most difficult problem. Hence, it requires a mutually agreed comprehensive system. It often happens that both states have divergent opinions on dealing with terrorism. The water issue is another problematic concern between India and Pakistan which has the potential to roll back the normalization process. Both states need to address the water issue at the Indus Waters Commission or at the government level instead of filing it to international bodies.<sup>(31)</sup>

Kashmir has always been the bone of contention between India and Pakistan. This enduring conflict has generated many complexities in inter-state

relations. It remains on the top of the agenda in terms of outstanding issues. Ceasefire violations on the Line of Control have become the norm in bilateral relations which often disrupt the cross-LoC trade. Both states need to sort out this problem parallel to trade normalization. The entire process of liberalization of trade would remain vulnerable if this issue does not get resolved. Many analysts argue that the Siachen and Sir Creek issues are solvable, but require political will and a rational approach. For Siachen, in particular, both states need to resolve this issue at their respective national levels based on the understanding of the common good and the collective human and economic costs of war.<sup>(32)</sup>

### Notes and References

1. Mohsin Khan, "India-Pakistan Trade Relations: A New Beginning", *New America Foundation*, Washington DC, January 2013, available at <[www.newamerica.net](http://www.newamerica.net)>
2. World Development Indicators (WDI), the World Bank, 2010, cited in Salim Raihan and Prabir De, "India-Pakistan Economic Cooperation: Implications for Regional Integration in South Asia", *Commonwealth Secretariat*, April 2013.
3. Mohsin Khan, op.cit, ref.1, p.3.
4. Waqas Bin Najib, Faisal Ali Baig, and Amna Ansari, "Implications for Trade Liberalization between Pakistan and India", *Punjab Board of Investment and Trade (PBIT)*, Lahore, 2012.
5. Data is taken from the SAARC official website. <<http://www.saarc-sec.org>>.
6. Ibid.
7. "Implications of Liberalization Trade and Investment with India", chapter 2, *Research Department, State Bank of Pakistan*, 2006, available at <[www.sbp.org.pk](http://www.sbp.org.pk)>.
8. data taken from SAARC secretariat website <<http://www.saarc-sec.org>>.
9. "Implications of Liberalization Trade and Investment with India", op.cit, ref. 7, chapter 5.
10. Nisha Taneja, "Enhancing India-Pakistan Trade", *New America Foundation*, Washington DC, January 2013, available at <[www.newamerica.net](http://www.newamerica.net)>.
11. "Pakistan, India signed three agreements", *Dawn*, 21 September, 2012.
12. "Implications of Liberalization Trade and Investment with India", op. cit, ref. 7, p.1.
13. Selim Raihan and Prabir De, "India-Pakistan Economic Cooperation: Implications for Regional Integration in South Asia", *Commonwealth Secretariat*, April 2013, p.7.
14. Dr. Nisha Taneja is a professor of economics. She is a member of Indian Council for Research on International Economic Relations (ICRIER).

15. Nisha Taneja, "Trade Possibilities and Non-Tariff Barriers to Indo-Pak Trade", *Indian Council for Research on International Economic Relations*, New Delhi, October 2007, p.9.
16. Nisha Taneja, "Enhancing India-Pakistan Trade, op. cit, ref.10, p.13.
17. Nisha Taneja, "Trade Possibilities and Non-Tariff Barriers to Indo-Pak Trade", op. cit, ref. 14, pp.10-11.
18. Dr. Ishrat Hussain is lead Pakistani economist. He is Dean and Director of Institute of Business Administration (IBA), Karachi.
19. Ishrat Hussain, "Normalizing India-Pakistan Trade Relations", Lecture delivered at Indian Council for Research on International Economic Relations (ICRIER), New Delhi, on 5 February 2013.
20. Dr. Selim Raihan is professor of economics at University of Dhaka, Banladesh.
21. Dr. Prabir De is senior fellow at the Research and Information System for Developing Countries, (RID), India.
22. Ejaz Ghani is an economist in Economic Policy and Debt at the World Bank.
23. Selim Raihan and Prabir De, op. cit, ref.13, p.9.
24. Ishrat Hussain, "Prospects and Challenges for Increasing India-Pakistan Trade", Atlantic Council, Washington DC, November 2011, p.9.
25. Sir Maurice Gwyer and A. Appadorai, speeches and documents on the Indian Constitution, (Bombay: Oxford University Press, 1957), pp.388-389.
26. Aarish U. Khan, "Siachen Glacier: Getting Past the Deadlock", *Regional Studies*, Vol.xxx, No.3, Summer 2012, pp.8-11.
27. Hassan Askari, "Pakistan-India Relations: The Revived Dialogue and the Future Prospects", *Pakistan Institute of Legislative Development and Transparency (PILDAT)*, Islamabad, August 2012, p.23.
28. Ishrat Hussain, op. cit, ref.19, p.2.
29. "Today environment Favorable," *Times of India*, 11 February 2012.
30. Mohsin Khan, op. cit, ref.1, p.12.
31. Hassan Askari, op. cit, ref 27, p. 23.
32. Aarish U. Khan, op. cit, ref.26, p.18.

*Annex I***AGREEMENT ON  
SAARC PREFERENTIAL TRADING ARRANGEMENT (SAPTA)****Preamble**

The Government of the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka hereinafter referred to as "Contracting States",

Motivated by the commitment to promote regional co-operation for the benefit of their peoples, in a spirit of mutual accommodation, with full respect for the principles of sovereign equality, independence and territorial integrity of all States;

Aware that the expansion of trade could act as a powerful stimulus to the development of their national economies, by expanding investment and production, thus providing greater opportunities of employment and help securing higher living standards for their population;

Convinced of the need to establish and promote regional preferential trading arrangement for strengthening intra-regional economic cooperation and the development of national economies;

Bearing in mind the urgent need to promote the intra-regional trade which presently constitutes a negligible share in the total volume of the South Asian trade;

Recalling the direction given at the Fourth SAARC Summit meeting held in Islamabad in December 1988 that specific areas be identified where economic cooperation might be feasible immediately;

Guided by the declared commitment of the Heads of State or Government of the Member Countries at the Sixth SAARC Summit held in Colombo in December 1991 to the liberalisation of trade in the region through a step by step approach in such a manner that countries in the region share the benefits of trade expansion equitably;

Cognizant of the mandate given by the Sixth SAARC Summit in Colombo to formulate and seek agreement on an institutional framework under which specific measures for trade liberalization among SAARC Member States could be furthered and to examine the Sri Lankan proposal to establish the SAARC Preferential Trading Arrangement (SAPTA) by 1997;

Recognizing that a preferential trading arrangement is the first step towards higher levels of trade and economic cooperation in the region,

Have agreed as follows:

**Article - 1**

## Definitions

For the purpose of this Agreement:

- (1) "Least Developed Country" means a country designated as such by the United Nations.
- (2) "Contracting State" means any Member State of the South Asian Association for Regional Cooperation (SAARC) which has entered into this Agreement.

(3) "Serious injury" means significant damage to domestic producers, of like or similar products resulting from a substantial increase of preferential imports in situations which cause substantial losses in terms of earnings, production or employment unsustainable in the short term. The examination of the impact on the domestic industry concerned shall also include an valuation of other relevant economic factors and indices having a bearing on the state of the domestic industry of that product.

(4) "Threat of serious injury" means a situation in which a substantial increase of preferential imports is of a nature to cause "serious injury" to domestic producers, and that such injury, although not yet existing, is clearly imminent. A determination of threat of serious injury shall be based on facts and not on mere allegation, conjecture, or remote or hypothetical possibility.

(5) "Critical circumstances" means the emergence of an exceptional situation where massive preferential imports are causing or threatening to cause "serious injury" difficult to repair and which calls for immediate action.

(6) "Sectoral basis" means agreements amongst Contracting States regarding the removal or reduction of tariff, non-tariff and para-tariff barriers as well as other trade promotion or cooperative measures for specified products or groups of products closely related in end-use or in production.

(7) "Direct trade measures" means measures conducive to promoting mutual trade of Contracting States such as long and medium-term contracts containing import and supply commitments in respect of specific products, buy-back arrangements, state trading operations, and government and public procurement.

(8) "Tariffs" means customs duties included in the national tariff schedules of the Contracting States.

(9) "Para-tariffs" means border charges and fees, other than "tariffs", on foreign trade transactions of a tariff-like effect which are levied solely on imports, but not those indirect taxes and charges, which are levied in the same manner on like domestic products. Import charges corresponding to specific services rendered are not considered as para-tariff measures.

(10) "Non-tariffs" means any measure, regulation, or practice, other than "tariffs" and "para-tariffs", the effect of which is to restrict imports, or to significantly distort trade.

(11) "Products" means all products including manufactures and commodities in their raw, semi-processed and processed forms.

## **Article - 2**

### **Establishment and Aims**

1. By the present Agreement, the Contracting States establish the SAARC Preferential Trading

Arrangement (SAPTA) to promote and sustain mutual trade and the economic cooperation among the Contracting States, through exchanging concessions in accordance with this Agreement.

2. SAPTA will be governed by the provisions of this Agreement and also by the rules,

regulations, decisions, understandings and protocols to be agreed upon within its framework by the Contracting States.

**Article - 3**

Principles

SAPTA shall be governed in accordance with the following principles:-

- (a) SAPTA shall be based and applied on the principles of overall reciprocity and mutuality of advantages in such a way as to benefit equitably all Contracting States, taking into account their respective levels of economic and industrial development, the pattern of their external trade, trade and tariff policies and systems;
- (b) SAPTA shall be negotiated step by step, improved and extended in successive stages with periodic reviews;
- (c) The special needs of the Least Developed Contracting States shall be clearly recognised and concrete preferential measures in their favour should be agreed upon;
- (d) SAPTA shall include all products, manufactures and commodities in their raw, semi-processed and processed forms.

**Article - 4**

Components

SAPTA may, inter-alia, consist of arrangements relating to:-

- (a) tariffs;
- (b) para-tariffs;
- (c) non-tariff measures;
- (d) direct trade measures.

**Article - 5**

Negotiations

1. The Contracting States may conduct their negotiations for trade liberalisation in accordance with any or a combination of the following approaches and procedures:-

- (a) Product-by-product basis;
- (b) Across-the-board tariff reductions;
- (c) Sectoral basis;
- (d) Direct trade measures.

2. Contracting States agreed to negotiate tariff preferences initially on a product-by-product basis.

3. The Contracting States shall enter into negotiations from time to time with a view to further expanding SAPTA and the fuller attainment of its aims.

**Article - 6**

Additional Measures

1. Contracting States agree to consider, in addition to the measures set out in Article 4, the adoption of trade facilitation and other measures to support and complement SAPTA to mutual benefit.

2. Special consideration shall be given by Contracting States to requests from Least Developed Contracting States for technical assistance and cooperation arrangements designed to assist them in expanding their trade with other Contracting States and in taking advantage of the potential benefits of SAPTA.

The possible areas for such technical assistance and cooperation are listed in Annex - I

**Article - 7**

Schedules of Concessions

The tariff, para-tariff and non-tariff concessions negotiated and exchanged amongst Contracting States shall be incorporated in the National Schedules of Concessions.

**Article – 8**

Extension of Negotiated Concessions

The concessions agreed to under SAPTA, except those made exclusively to the Least Developed Contracting States in pursuance of Article 10 of this Agreement, shall be extended unconditionally to all Contracting States.

**Article - 9**

Committee of Participants

A Committee of Participants, hereinafter referred to as the Committee, consisting of representatives of Contracting States, is hereby established. The Committee shall meet at least once a year to review the progress made in the implementation of this Agreement and to ensure that benefits of trade expansion emanating from this Agreement accrue to all Contracting States equitably. The Committee shall also accord adequate opportunities for consultation on representations made by any Contracting State with respect to any matter affecting the implementation of the Agreement. The Committee shall adopt appropriate measures for settling such representations. The Committee shall determine its own rules of procedures.

**Article - 10**

Special Treatment for the  
Least Developed Contracting States

1. In addition to other provisions of this Agreement, all Contracting States shall provide, wherever possible, special and more favourable treatment exclusively to the Least Developed Contracting States as set out in the following subparagraphs:

- (a) Duty-free access, exclusive tariff preferences or deeper tariff preferences for the export products,
- (b) The removal of non-tariff barriers,
- (c) The removal, where appropriate, of para-tariff barriers,
- (d) The negotiations of long-term contracts with a view to assisting Least Developed Contracting States to achieve reasonable levels of sustainable exports of their products,
- (e) Special consideration of exports from Least Developed Contracting States in the application of safeguard measures,
- (f) Greater flexibility in the introduction and continuance of quantitative or other restrictions provisionally and without discrimination in critical circumstances by the Least Developed Contracting States on imports from other Contracting States.

**Article - 11**

#### Non-application

Notwithstanding the measures as set out in Articles 4 and 6, the provisions of this Agreement shall not apply in relation to preferences already granted or to be granted by any Contracting State to other Contracting States outside the framework of this Agreement, and to third countries through bilateral, plurilateral and multilateral trade agreements, and similar arrangements. The Contracting States shall also not be obliged to grant preferences in SAPTA which impair the concession extended under those agreements.

#### **Article - 12**

##### Communication, Transport and Transit

Contracting States agree to undertake appropriate steps and measures for developing and improving communication system, transport infrastructure and transit facilities for accelerating the growth of trade within the region.

#### **Article - 13**

##### Balance-of-Payments Measures

1. Notwithstanding the provisions of this Agreement, any Contracting State facing serious economic problems including balance of payments difficulties may suspend provisionally the concessions as to the quantity and value of merchandise permitted to be imported under the Agreement. When such action has taken place, the Contracting State which initiates such action, shall simultaneously notify the other Contracting States and the Committee.

2. Any Contracting State which takes action according to paragraph 1 of this Article shall afford, upon request from any other Contracting State, adequate opportunities for consultations with a view to preserving the stability of the concessions negotiated under the SAPTA. If no satisfactory adjustment is effected between the Contracting States concerned within 90 days of such notification, the matter may be referred to the Committee for review.

#### **Article - 14**

##### Safeguard Measures

If any product, which is a subject of a concession with respect to a preference under this Agreement, is imported into the territory of a Contracting State in such a manner or in such quantities as to cause or threaten to cause, serious injury in the importing Contracting State, the importing Contracting State concerned may, with prior consultations, except in critical circumstances, suspend provisionally without discrimination, the concession accorded under the Agreement. When such action has taken place the Contracting State which initiates such action shall simultaneously notify the other Contracting State(s) concerned and the Committee shall enter into consultations with the concerned Contracting State and endeavour to reach mutually acceptable agreement to remedy the situation. In the event of the failure of the Contracting States to resolve the issue within 90 days of the receipt of original notification, the Committee of Participants shall meet within 30 days to review the situation and try to settle the issue amicably. Should the consultations in the Committee of Participants fail to resolve the issue within 60 days, the parties affected by such action shall have the right to withdraw equivalent concession(s) or other obligation(s) which the Committee does not disapprove of.



**Article - 15**

## Maintenance of the Value of Concessions

Any of the concessions agreed upon under this Agreement shall not be diminished or nullified, by the application of any measures restricting trade by the Contracting States except under the provisions as spelt out in other Articles of this Agreement.

**Article - 16**

## Rules of Origin

Products contained in the National Schedules of Concessions annexed to this Agreement shall be eligible for preferential treatment if they satisfy the rules of origin, including special rules of origin, in respect of the Least Developed Contracting States.

**Article - 17**

## Modification and Withdrawal of Concessions

1. Any Contracting State may, after a period of three years from the day the concession was extended, notify the Committee of its intention to modify or withdraw any concession included in its appropriate schedule.
2. The Contracting State intending to withdraw or modify a concession shall enter into consultation and/or negotiations, with a view to reaching agreement on any necessary and appropriate compensation, with Contracting States with which such concession was initially negotiated and with any other Contracting States that have a principal or substantial supplying interest as may be determined by the Committee.
3. Should no agreement be reached between the Contracting States concerned within six months of the receipt of notification and should the notifying Contracting State proceed with its modification or withdrawal of such concessions, the affected Contracting States as determined by the Committee may withdraw or modify equivalent concessions in their appropriate schedules. Any such modification or withdrawal shall be notified to the Committee.

**Article - 18**

## Withholding or Withdrawal of Concessions

A Contracting State shall at any time be free to withhold or to withdraw in whole or in part any item in its schedule of concessions in respect of which it determines that it was initially negotiated with a State which has ceased to be a Contracting State in this Agreement. A Contracting State taking such action shall notify the Committee, and upon request, consult with Contracting States that have a substantial interest in the product concerned.

**Article - 19**

## Consultations

1. Each Contracting State shall accord sympathetic consideration to and shall afford adequate opportunity for consultations regarding such representations as may be made by another Contracting State with respect to any matter affecting the operation of this Agreement.
2. The Committee may, at the request of a Contracting State, consult with any Contracting

State in respect of any matter for which it has not been possible to find a satisfactory solution through such consultation under paragraph 1 above.

**Article - 20**

Settlement of Disputes

Any dispute that may arise among the Contracting States regarding the interpretation and application of the provisions of this Agreement or any instrument adopted within its framework shall be amicably settled by agreement between the parties concerned. In the event of failure to settle a dispute, it may be referred to the Committee by a party to the dispute. The Committee shall review the matter and make a recommendation thereon within 120 days from the date on which the dispute was submitted to it. The Committee shall adopt appropriate rules for this purpose.

**Article - 21**

Withdrawal from SAPTA

1. Any Contracting State may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall be effective six months from the day on which written notice thereof is received by the SAARC Secretariat, the depositary of this Agreement. That Contracting State shall simultaneously inform the Committee of the action it has taken.
2. The rights and obligations of a Contracting State which has withdrawn from this Agreement shall cease to apply as of that effective date.
3. Following the withdrawal by any Contracting State, the Committee shall meet within 30 days to consider action subsequent to withdrawal.

**Article - 22**

Entry into Force

This Agreement shall enter into force on the thirtieth day after the notification issued by the SAARC Secretariat regarding completion of the formalities by all Contracting States.

**Article - 23**

Reservations

This Agreement may not be signed with reservations nor shall reservations be admitted at the time of notification to the SAARC Secretariat of the completion of formalities.

**Article - 24**

Amendments

This Agreement may be modified through amendments to this Agreement. All amendments shall become effective upon acceptance by all Contracting States.

**Article - 25**

Depositary

This Agreement shall be deposited with the Secretary- General of SAARC who shall promptly furnish a certified copy thereof to each Contracting State.

IN WITNESS WHEREOF the undersigned being duly authorized thereto by their respective Governments have signed this Agreement on the SAARC Preferential Trading Arrangement.

Done at DHAKA this ELEVENTH day of APRIL One Thousand Nine Hundred Ninety Three in eight originals in the English language.

A.S.M. MOSTAFIZUR RAHMAN DAWA TSERING

Minister of Foreign Affairs Minister of Foreign Affairs

People's Republic of Bangladesh Kingdom of Bhutan

DINESH SINGH FATHULLA JAMEEL

Minister of External Affairs Minister of Foreign Affairs

Republic of India Republic of Maldives

MAHESH ACHARYA MOHAMMAD SIDDIQUE KHAN KANJU

State Minister of Finance Minister of State for Foreign Affairs

His Majesty's Government of Nepal Islamic Republic of Pakistan

HAROLD HERAT

Minister of Foreign Affairs.

Democratic Socialist Republic of Sri Lanka

Annex - I

#### ADDITIONAL MEASURES IN FAVOUR OF LEAST DEVELOPED CONTRACTING STATES

(a) The identification, preparation and establishment of industrial and agricultural projects in the territories of Least Developed Contracting States which could provide the production base for the expansion of exports of Least Developed Contracting States to other Contracting States, possibly linked to co-operative financing and buy-back arrangements;

(b) the setting up of manufacturing and other facilities in Least Developed Contracting States to meet intra-regional demand under co-operative arrangements;

(c) the formulation of export promotion policies and the establishment of training facilities in the field of trade to assist Least Developed Contracting States in expanding their exports and in maximising their benefits from SAPTA;

(d) the provision of support to export marketing of products of Least Developed Contracting

States by enabling these countries to share existing facilities (for example, with respect to export credit insurance, access to market information) and by institutional and other positive measures to facilitate imports from Least Developed Contracting States into their own markets;

(e) bringing together of enterprises in other Contracting States with project sponsors in the Least

Developed Contracting States (both public and private) with a view to promoting joint ventures in projects designed to lead to the expansion of trade;

(f) the provision of special facilities and rates in respect to shipping.

*Annex II***AGREEMENT ON  
SOUTH ASIAN FREE TRADE AREA (SAFTA)****Article – 1***Definitions*

For the purposes of this Agreement:

1. Concessions mean tariff, para-tariff and non-tariff concessions agreed under the Trade Liberalisation Programme;
2. Direct Trade Measures mean measures conducive to promoting mutual trade of Contracting States such as long and medium-term contracts containing import and supply commitments in respect of specific products, buy-back arrangements, state trading operations, and government and public procurement;
3. Least Developed Contracting State refers to a Contracting State which is designated as a “Least Developed Country” by the United Nations;
4. Margin of Preference means percentage of tariff by which tariffs are reduced on products imported from one Contracting State to another as a result of preferential treatment.
5. Non-Tariff Measures include any measure, regulation, or practice, other than “tariffs” and “para-tariffs”.
6. Para-Tariffs mean border charges and fees, other than “tariffs”, on foreign trade transactions of a tariff-like effect which are levied solely on imports, but not those indirect taxes and charges, which are levied in the same manner on like domestic products. Import charges corresponding to specific services rendered are not considered as para-tariff measures;
7. Products mean all products including manufactures and commodities in their raw, semi-processed and processed forms;
8. SAPTA means Agreement on SAARC Preferential Trading Arrangement signed in Dhaka on the 11th of April 1993;
9. Serious injury means a significant impairment of the domestic industry of like or directly competitive products due to a surge in preferential imports causing substantial losses in terms of earnings, production or employment unsustainable in the short term;
10. Tariffs mean customs duties included in the national tariff schedules of the Contracting States;
11. Threat of serious injury means a situation in which a substantial increase of preferential imports is of a nature to cause “serious injury” to domestic producers, and that such injury, although not yet existing, is clearly imminent. A determination of threat of serious injury shall be based on facts and not on mere allegation, conjecture, or remote or hypothetical possibility.

**Article – 2***Establishment*

The Contracting States hereby establish the South Asian Free Trade Area (SAFTA) to promote and enhance mutual trade and economic cooperation among the Contracting States, through exchanging concessions in accordance with this Agreement.

**Article – 3***Objectives and Principles*

1. The Objectives of this Agreement are to promote and enhance mutual trade and economic cooperation among Contracting States by, inter-alia:

- a) eliminating barriers to trade in, and facilitating the cross-border movement of goods between the territories of the Contracting States;
- b) promoting conditions of fair competition in the free trade area, and ensuring equitable benefits to all Contracting States, taking into account their respective levels and pattern of economic development;
- c) creating effective mechanism for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
- d) establishing a framework for further regional cooperation to expand and enhance the mutual benefits of this Agreement.

2. SAFTA shall be governed in accordance with the following principles:

- a) SAFTA will be governed by the provisions of this Agreement and also by the rules, regulations, decisions, understandings and protocols to be agreed upon within its framework by the Contracting States;
- b) The Contracting States affirm their existing rights and obligations with respect to each other under Marrakesh Agreement Establishing the World Trade Organization and other Treaties/Agreements to which such Contracting States are signatories;
- c) SAFTA shall be based and applied on the principles of overall reciprocity and mutuality of advantages in such a way as to benefit equitably all Contracting States, taking into account their respective levels of economic and industrial development, the pattern of their external trade and tariff policies and systems;
- d) SAFTA shall involve the free movement of goods, between countries through, inter alia, the elimination of tariffs, para tariffs and non-tariff restrictions on the movement of goods, and any other equivalent measures;
- e) SAFTA shall entail adoption of trade facilitation and other measures, and the progressive harmonization of legislations by the Contracting States in the relevant areas; and
- f) The special needs of the Least Developed Contracting States shall be clearly recognized by adopting concrete preferential measures in their favour on a non-reciprocal basis.

**Article – 4***Instruments*

The SAFTA Agreement will be implemented through the following instruments:-

1. Trade Liberalisation Programme
2. Rules of Origin
3. Institutional Arrangements
4. Consultations and Dispute Settlement Procedures
5. Safeguard Measures
6. Any other instrument that may be agreed upon.

**Article – 5**

*National Treatment*

Each Contracting State shall accord national treatment to the products of other Contracting States in accordance with the provisions of Article III of GATT 1994.

**Article – 6***Components*

SAFTA may, inter-alia, consist of arrangements relating to:

- a) tariffs;
- b) para-tariffs;
- c) non-tariff measures;
- d) direct trade measures.

**Article – 7***Trade Liberalisation Programme*

1. Contracting States agree to the following schedule of tariff reductions:

- a) The tariff reduction by the Non-Least Developed Contracting States from existing tariff rates to 20% shall be done within a time frame of 2 years, from the date of coming into force of the Agreement. Contracting States are encouraged to adopt reductions in equal annual installments. If actual tariff rates after the coming into force of the Agreement are below 20%, there shall be an annual reduction on a Margin of Preference basis of 10% on actual tariff rates for each of the two years.
- b) The tariff reduction by the Least Developed Contracting States from existing tariff rates will be to 30% within the time frame of 2 years from the date of coming into force of the Agreement. If actual tariff rates on the date of coming into force of the Agreement are below 30%, there will be an annual reduction on a Margin of Preference basis of 5 % on actual tariff rates for each of the two years.
- c) The subsequent tariff reduction by Non-Least Developed Contracting States from 20% or below to 0-5% shall be done within a second time frame of 5 years, beginning from the third year from the date of coming into force of the Agreement. However, the period of subsequent tariff reduction by Sri Lanka shall be six years. Contracting States are encouraged to adopt reductions in equal annual installments, but not less than 15% annually.
- d) The subsequent tariff reduction by the Least Developed Contracting States from 30% or below to 0-5% shall be done within a second time frame of 8 years beginning from the third year from the date of coming into force of the Agreement. The Least Developed Contracting States are encouraged to adopt reductions in equal annual installments, not less than 10% annually.

2. The above schedules of tariff reductions will not prevent Contracting States from immediately reducing their tariffs to 0-5% or from following an accelerated schedule of tariff reduction.

3. a) Contracting States may not apply the Trade Liberalisation Programme as in paragraph 1 above, to the tariff lines included in the Sensitive Lists which shall be negotiated by the Contracting States (for LDCs and Non-LDCs) and incorporated in this Agreement as an integral part. The number of products in the Sensitive Lists shall be subject to maximum ceiling to be mutually agreed

among the Contracting States with flexibility to Least Developed Contracting States to seek derogation in respect of the products of their export interest; and  
 b) The Sensitive List shall be reviewed after every four years or earlier as may be decided by SAFTA Ministerial Council (SMC), established under Article 10, with a view to reducing the number of items in the Sensitive List.

4. The Contracting States shall notify the SAARC Secretariat all non-tariff and paratariff measures to their trade on an annual basis. The notified measures shall be reviewed by the Committee of Experts, established under Article 10, in its regular meetings to examine their compatibility with relevant WTO provisions. The Committee of Experts shall recommend the elimination or implementation of the measure in the least trade restrictive manner in order to facilitate intra-SAARC trade.

5. Contracting Parties shall eliminate all quantitative restrictions, except otherwise permitted under GATT 1994, in respect of products included in the Trade Liberalisation Programme.

1 The initial notification shall be made within three months from the date of coming into force of the Agreement and the COE shall review the notifications in its first meeting and take appropriate decisions.

6. Notwithstanding the provisions contained in paragraph 1 of this Article, the Non- Least Developed Contracting States shall reduce their tariff to 0-5% for the products of Least Developed Contracting States within a timeframe of three years beginning from the date of coming into force of the Agreement.

#### **Article – 8**

##### *Additional Measures*

Contracting States agree to consider, in addition to the measures set out in Article 7, the adoption of trade facilitation and other measures to support and complement SAFTA for mutual benefit. These may include, among others: -

- a) harmonization of standards, reciprocal recognition of tests and accreditation of testing laboratories of Contracting States and certification of products;
- b) simplification and harmonization of customs clearance procedure;
- c) harmonization of national customs classification based on HS coding system;
- d) Customs cooperation to resolve dispute at customs entry points;
- e) simplification and harmonization of import licensing and registration procedures;
- f) simplification of banking procedures for import financing;
- g) transit facilities for efficient intra-SAARC trade, especially for the land-locked Contracting States;
- h) removal of barriers to intra-SAARC investments;
- i) macroeconomic consultations;
- j) rules for fair competition and the promotion of venture capital;
- k) development of communication systems and transport infrastructure;
- l) making exceptions to their foreign exchange restrictions, if any, relating to payments for products under the SAFTA scheme, as well as repatriation of such payments without prejudice to their rights under

Article XVIII of the General Agreement on Tariffs and Trade (GATT) and the relevant provisions of Articles of Treaty of the International Monetary Fund (IMF); and m) Simplification of procedures for business visas.

**Article – 9**

*Extension of Negotiated Concessions*

Concessions agreed to, other than those made exclusively to the Least Developed Contracting States, shall be extended unconditionally to all Contracting States.

**Article – 10**

*Institutional Arrangements*

1. The Contracting States hereby establish the SAFTA Ministerial Council (hereinafter referred to as SMC).
2. The SMC shall be the highest decision-making body of SAFTA and shall be responsible for the administration and implementation of this Agreement and all decisions and arrangements made within its legal framework.
3. The SMC shall consist of the Ministers of Commerce/Trade of the Contracting States.
4. The SMC shall meet at least once every year or more often as and when considered necessary by the Contracting States. Each Contracting State shall chair the SMC for a period of one year on rotational basis in alphabetical order.
5. The SMC shall be supported by a Committee of Experts (hereinafter referred to as COE), with one nominee from each Contracting State at the level of a Senior Economic Official, with expertise in trade matters.
6. The COE shall monitor, review and facilitate implementation of the provisions of this Agreement and undertake any task assigned to it by the SMC. The COE shall submit its report to SMC every six months.
7. The COE will also act as Dispute Settlement Body under this Agreement.
8. The COE shall meet at least once every six months or more often as and when considered necessary by the Contracting States. Each Contracting State shall chair the COE for a period of one year on rotational basis in alphabetical order.
9. The SAARC Secretariat shall provide secretarial support to the SMC and COE in the discharge of their functions.
10. The SMC and COE will adopt their own rules of procedure.

**Article – 11**

*Special and Differential Treatment for the Least Developed Contracting States*

In addition to other provisions of this Agreement, all Contracting States shall provide special and more favorable treatment exclusively to the Least Developed Contracting States as set out in the following sub-paragraphs:

- a) The Contracting States shall give special regard to the situation of the Least Developed Contracting States when considering the application of anti-dumping and/or countervailing measures. In this regard, the Contracting States shall provide an opportunity to Least Developed Contracting States for consultations. The Contracting States shall, to the extent practical, favourably consider accepting price undertakings offered by exporters from Least Developed Contracting States. These constructive remedies shall be available until the trade liberalisation programme has been completed by all Contracting States.



- b) Greater flexibility in continuation of quantitative or other restrictions provisionally and without discrimination in critical circumstances by the Least Developed Contracting States on imports from other Contracting States.
- c) Contracting States shall also consider, where practical, taking direct trade measures with a view to enhancing sustainable exports from Least Developed Contracting States, such as long and medium-term contracts containing import and supply commitments in respect of specific products, buy-back arrangements, state trading operations, and government and public procurement.
- d) Special consideration shall be given by Contracting States to requests from Least Developed Contracting States for technical assistance and cooperation arrangements designed to assist them in expanding their trade with other Contracting States and in taking advantage of the potential benefits of SAFTA. A list of possible areas for such technical assistance shall be negotiated by the Contracting States and incorporated in this Agreement as an integral part.
- e) The Contracting States recognize that the Least Developed Contracting States may face loss of customs revenue due to the implementation of the Trade Liberalisation Programme under this Agreement. Until alternative domestic arrangements are formulated to address this situation, the Contracting States agree to establish an appropriate mechanism to compensate the Least Developed Contracting States for their loss of customs revenue. This mechanism and its rules and regulations shall be established prior to the commencement of the Trade Liberalisation Programme (TLP).

**Article – 12**

*Special Provision for Maldives*

Notwithstanding the potential or actual graduation of Maldives from the status of a Least Developed Country, it shall be accorded in this Agreement and in any subsequent contractual undertakings thereof treatment no less favourable than that provided for the Least Developed Contracting States.

**Article – 13**

*Non-application*

Notwithstanding the measures as set out in this Agreement its provisions shall not apply in relation to preferences already granted or to be granted by any Contracting State to other Contracting States outside the framework of this Agreement, and to third countries through bilateral, plurilateral and multilateral trade agreements and similar arrangements.

**Article – 14**

*General Exceptions*

- a) Nothing in this Agreement shall be construed to prevent any Contracting State from taking action and adopting measures which it considers necessary for the protection of its national security.
- b) Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the similar conditions prevail, or a disguised restriction on intraregional trade, nothing in this Agreement shall be construed to prevent any Contracting State from taking action and adopting measures which it considers necessary for the protection of :

- (i) public morals;
- (ii) human, animal or plant life and health; and
- (iii) articles of artistic, historic and archaeological value.

**Article – 15***Balance of Payments Measures*

1. Notwithstanding the provisions of this Agreement, any Contracting State facing serious balance of payments difficulties may suspend provisionally the concessions extended under this Agreement.
2. Any such measure taken pursuant to paragraph 1 of this Article shall be immediately notified to the Committee of Experts.
3. The Committee of Experts shall periodically review the measures taken pursuant to paragraph 1 of this Article.
4. Any Contracting State which takes action pursuant to paragraph 1 of this Article shall afford, upon request from any other Contracting State, adequate opportunities for consultations with a view to preserving the stability of concessions under SAFTA.
5. If no satisfactory adjustment is effected between the Contracting States concerned within 30 days of the beginning of such consultations, to be extended by another 30 days through mutual consent, the matter may be referred to the Committee of Experts.
6. Any such measures taken pursuant to paragraph 1 of this Article shall be phased out soon after the Committee of Experts comes to the conclusion that the balance of payments situation of the Contracting State concerned has improved.

**Article – 16***Safeguard Measures*

1. If any product, which is the subject of a concession under this Agreement, is imported into the territory of a Contracting State in such a manner or in such quantities as to cause, or threaten to cause, serious injury to producers of like or directly competitive products in the importing Contracting State, the importing Contracting State may, pursuant to an investigation by the competent authorities of that Contracting State conducted in accordance with the provisions set out in this Article, suspend temporarily the concessions granted under the provisions of this Agreement. The examination of the impact on the domestic industry concerned shall include an evaluation of all other relevant economic factors and indices having a bearing on the state of the domestic industry of the product and a causal relationship must be clearly established between “serious injury” and imports from within the SAARC region, to the exclusion of all such other factors.
2. Such suspension shall only be for such time and to the extent as may be necessary to prevent or remedy such injury and in no case, will such suspension be for duration of more than 3 years.
3. No safeguard measure shall be applied again by a Contracting State to the import of a product which has been subject to such a measure during the period of implementation of Trade Liberalization Programme by the Contracting States, for a period of time equal to that during which such measure had been

previously applied, provided that the period of non-application is at least two years.

4. All investigation procedures for resorting to safeguard measures under this Article shall be consistent with Article XIX of GATT 1994 and WTO Agreement on Safeguards

5. Safeguard action under this Article shall be non-discriminatory and applicable to the product imported from all other Contracting States subject to the provisions of paragraph 8 of this Article.

6. When safeguard provisions are used in accordance with this Article, the Contracting State invoking such measures shall immediately notify the exporting Contracting State(s) and the Committee of Experts.

7. In critical circumstances where delay would cause damage which it would be difficult to repair, a Contracting State may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during this period the pertinent requirements of this Article shall be met.

8. Notwithstanding any of the provisions of this Article, safeguard measures under this article shall not be applied against a product originating in a Least Developed Contracting State as long as its share of imports of the product concerned in the importing Contracting State does not exceed 5 per cent, provided Least Developed Contracting States with less than 5% import share collectively account for not more than 15% of total imports of the product concerned.

#### **Article – 17**

##### *Maintenance of the Value of Concessions*

Any of the concessions agreed upon under this Agreement shall not be diminished or nullified, by the application of any measures restricting trade by the Contracting States, except under the provisions of other articles of this Agreement.

#### **Article – 18**

##### *Rules of Origin*

Rules of Origin shall be negotiated by the Contracting States and incorporated in this Agreement as an integral part.

#### **Article – 19**

##### *Consultations*

1. Each Contracting State shall accord sympathetic consideration to and will afford adequate opportunity for consultations regarding representations made by another Contracting State with respect to any matter affecting the operation of this Agreement.

2. The Committee of Experts may, at the request of a Contracting State, consult with any Contracting State in respect of any matter for which it has not been possible to find a satisfactory solution through consultations under paragraph 1.

#### **Article – 20**

##### *Dispute Settlement Mechanism*

1. Any dispute that may arise among the Contracting States regarding the interpretation and application of the provisions of this Agreement or any instrument adopted within its framework concerning the rights and obligations of the Contracting States will be amicably settled among the parties concerned through a process initiated by a request for bilateral consultations.
2. Any Contracting State may request consultations in accordance with paragraph 1 of this Article with other Contracting State in writing stating the reasons for the request including identification of the measures at issue. All such requests should be notified to the Committee of Experts, through the SAARC Secretariat with an indication of the legal basis for the complaint.
3. If a request for consultations is made pursuant to this Article, the Contracting State to which the request is made shall, unless otherwise mutually agreed, reply to the request within 15 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
4. If the Contracting State does not respond within 15 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Contracting State that requested the holding of consultations may proceed to request the Committee of Experts to settle the dispute in accordance with working procedures to be drawn up by the Committee.
5. Consultations shall be confidential, and without prejudice to the rights of any Contracting State in any further proceedings.
6. If the consultations fail to settle a dispute within 30 days after the date of receipt of the request for consultations, to be extended by a further period of 30 days through mutual consent, the complaining Contracting State may request the Committee of Experts to settle the dispute. The complaining Contracting State may request the Committee of Experts to settle the dispute during the 60-day period if the consulting Contracting States jointly consider that consultations have failed to settle the dispute.
7. The Committee of Experts shall promptly investigate the matter referred to it and make recommendations on the matter within a period of 60 days from the date of referral.
8. The Committee of Experts may request a specialist from a Contracting State not party to the dispute selected from a panel of specialists to be established by the Committee within one year from the date of entry into force of the Agreement for peer review of the matter referred to it. Such review shall be submitted to the Committee within a period of 30 days from the date of referral of the matter to the specialist.
9. Any Contracting State, which is a party to the dispute, may appeal the recommendations of the Committee of Experts to the SMC. The SMC shall review the matter within the period of 60 days from date of submission of request for appeal. The SMC may uphold, modify or reverse the recommendations of the Committee of Experts.

10. Where the Committee of Experts or SMC concludes that the measure subject to dispute is inconsistent with any of the provisions of this Agreement, it shall recommend that the Contracting State concerned bring the measure into conformity with this Agreement. In addition to its recommendations, the Committee of Experts or SMC may suggest ways in which the Contracting State concerned could implement the recommendations.

11. The Contracting State to which the Committee's or SMC's recommendations are addressed shall within 30 days from the date of adoption of the recommendations by the Committee or SMC, inform the Committee of Experts of its intentions regarding implementation of the recommendations. Should the said Contracting State fail to implement the recommendations within 90 days from the date of adoption of the recommendations by the Committee, the Committee of Experts may authorize other interested Contracting States to withdraw concessions having trade effects equivalent to those of the measure in dispute.

#### **Article – 21**

##### *Withdrawal*

1. Any Contracting State may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall be effective on expiry of six months from the date on which a written notice thereof is received by the Secretary-General of SAARC, the depositary of this Agreement. That Contracting State shall simultaneously inform the Committee of Experts of the action it has taken.

2. The rights and obligations of a Contracting State which has withdrawn from this Agreement shall cease to apply as of that effective date.

3. Following the withdrawal by any Contracting State, the Committee shall meet within 30 days to consider action subsequent to withdrawal.

#### **Article – 22**

##### *Entry into Force*

1. This Agreement shall enter into force on 1st January 2006 upon completion of formalities, including ratification by all Contracting States and issuance of a notification thereof by the SAARC Secretariat. This Agreement shall supersede the Agreement on SAARC Preferential Trading Arrangement (SAPTA).

2. Notwithstanding the supercession of SAPTA by this Agreement, the concessions granted under the SAPTA Framework shall remain available to the Contracting States until the completion of the Trade Liberalisation Programme.

#### **Article – 23**

##### *Reservations*

This Agreement shall not be signed with reservations, nor will reservations be admitted at the time of notification to the SAARC Secretariat of the completion of formalities.

#### **Article – 24**

##### *Amendments*

This Agreement may be amended by consensus in the SAFTA Ministerial Council. Any such amendment will become effective upon the deposit of instruments of acceptance with the Secretary General of SAARC by all Contracting States.

**Article – 25***Depository*

This Agreement will be deposited with the Secretary General of SAARC, who will promptly furnish a certified copy thereof to each Contracting State.

IN WITNESS WHEREOF the undersigned being duly authorized thereto by their respective Governments have signed this Agreement.

DONE in ISLAMABAD, PAKISTAN, On This The Sixth Day Of the Year Two Thousand Four, In Nine Originals In The English Language All Texts Being Equally Authentic.

M. MORSHED KHAN

Minister for Foreign Affairs

People's Republic of Bangladesh

NADO RINCHHEN

Officiating Minister for

Foreign Affairs

Kingdom of Bhutan

YASHWANT SINHA

Minister of External Affairs

Republic of India

FATHULLA JAMEEL

Minister of Foreign Affairs

Republic of Maldives

DR. BHEKH B. THAPA

Ambassador-at-large

for Foreign Affairs

His Majesty's Government of Nepal

KHURSHID M. KASURI

Minister of Foreign Affairs

Islamic Republic of Pakistan

TYRONNE FERNANDO

Minister of Foreign Affairs

Democratic Socialist Republic of Sri Lanka