

TRADE REMEDIAL LAWS OF PAKISTAN: AN IMPLICATION OF THE WTO REGIME

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Since the establishment of WTO (World Trade Organization) in 1995, many of its member countries have been active in complying with the multilateral trade agreements administered by the Organization. It is this factor of compliance that has also led Pakistan to undergo legislations to bring into effect the rules and regulations provided for in the WTO Agreements.

Pakistan was one of the founding members of GATT (General Agreement on Tariffs and Trade) in 1947 that provided for international rules regarding trade in goods. This GATT 1947 was later annexed to Marrakesh Agreement establishing the World Trade Organization as GATT 1994. Despite being the founder member, Pakistan has been taking a long time to prepare for the challenges posed by international trade regime.

GATT practice has always been to require that the cuts in tariffs agreed in multilateral trade negotiations should be implemented in stages over an agreed number of years. The reason for it was to give industries time to adjust gradually to the increased competition resulting from reductions in tariffs and from the removal of other barriers to trade. Even with this phased implementation of tariff reductions, certain industrial or agricultural sectors, at times, face problems in adjusting to increased import competition. These problems flow chiefly from their failure to rationalize production structures or to adopt the technological innovations necessary to raise productivity. Yet, another menace of increased imports is attributable to unfair trade practices like dumping and subsidies by foreign suppliers.

Pakistan's domestic industry faces similar problems of increased imports and unfair practices under the global trade regime. WTO Agreements have an in-built mechanism providing for remedial measures to counteract the effect of these problems. Accordingly, Pakistan through national legislation has given effect to trade remedial measures provided for under the international trade laws. Pakistan has come up with Anti-Dumping and Countervailing Duties Ordinances of 2000 against unfair trade practices and the Safeguard

Measures Ordinance of 2002 against surge of imports in order to protect its domestic industry.

Safeguard Measures Ordinance of 2002

Safeguard measures are one of three types of contingent trade protection measures, along with anti-dumping and countervailing measures, available to WTO Members.

Safeguard measures are defined as "emergency" actions with respect to increased imports of particular products, where such imports have caused or threaten to cause serious injury to the importing Member's domestic industry. Such measures, which in broad terms take the form of suspension of concessions or obligations, can consist of quantitative import restrictions or of duty increases to higher than bound rates. As an example, United States, at one time, had applied safeguard measures to protect its local steel industry by increasing tariffs on steel imports. However, those measures were later found to be unjustified by WTO and were removed by US.

The Agreement on Safeguards ("SG Agreement") sets forth the rules for application of safeguard measures according to Article XIX of GATT 1994. This Article provides that where, as a result of tariff reductions, a Member country finds that a product is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers, it can impose safeguard measures to restrict such imports for temporary periods.

Pakistan through Safeguard Measures Ordinance, 2002 has given effect to the provisions of Article XIX of the General Agreement on Tariffs and Trade, 1994, and to the WTO Agreement on Safeguards for the imposition of safeguard measures. This has been done by providing a framework for investigation and determination of serious injury or threat of serious injury caused by products imported into Pakistan.

Pakistan may apply a safeguard measure on an imported product if, it is determined by an investigation conducted by one of its Authorities (National Tariff Commission) in accordance with the provisions of the Ordinance that as a result of unforeseen developments and of the effect of WTO obligations assumed by Pakistan, the product was being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause serious injury or threat of serious injury to domestic industry producing like or directly competitive products.

The investigations for the imposition of such measures can be initiated either by the National Tariff Commission itself or on the basis of a petition from the affected industry. In practice, the investigations are generally initiated

on the basis of petitions from the affected industry. However, petitions can be submitted only when it is possible to establish that there is a casual link between increased imports and the alleged serious injury to the industry.

The Safeguard Measures Ordinance, 2002 also lays down the criteria, which the investigating authorities must consider in determining whether increased imports are causing serious injury to the domestic industry. It even sets out basic procedural requirements for the conduct of investigations. One aim of the procedural requirements is to provide foreign suppliers and governments whose interests may be adversely affected by the proposed safeguard actions with an adequate opportunity to give evidence and to defend their interests.

The overall primary objective of providing such temporary increased protection is to give the affected industry time to prepare itself for the growing competition that it will have to face after the safeguard measures are removed.

Anti-Dumping Duties Ordinance, 2000

GATT acknowledges that the rise in imports may also be due to the adoption of unfair trade practices by foreign suppliers. Its rules therefore lay down the basis on which governments may levy compensatory duties on imports of products benefiting from such unfair practices. The GATT rules deal with two types of "unfair trade" practices, which distort conditions of competition. First, the conditions of competition may be distorted if the exported goods are dumped in foreign markets. Second, the competition may become unfair if the exported goods benefit from specific subsidies.

A product is considered dumped if the export price is less than the price charged for the like product in the exporting country. Dumping is, in general, a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country. Thus, in the simplest of cases, one identifies dumping simply by comparing prices in two markets. However, the situation is rarely, if ever, that simple, and in most cases it is necessary to undertake a series of complex analytical steps in order to determine the appropriate price in the market of the exporting country (known as the "normal value") and the appropriate price in the market of the importing country (known as the "export price") so as to be able to undertake an appropriate comparison.

The Agreement on the Implementation of Art. VI of GATT 1994, administered by WTO, elaborates the basic GATT rules on dumping and authorizes countries to levy anti-dumping duties on dumped products. Pakistan through Anti-dumping Ordinance, 2000 has repealed the Import of Goods (Anti-Dumping and Countervailing Duties) Ordinance, 1983 and has given effect to WTO provisions relating to imposition of anti-dumping duties in order

to offset dumping. This Ordinance has also provided a framework for investigation and determination of dumping and injury in respect of goods imported into Pakistan.

The National Tariff Commission in Pakistan may impose anti-dumping measures on products imported into Pakistan, in case it determines, after an investigation initiated and conducted in accordance with the provisions of the Ordinance, that: –

- (a) An investigated product is dumped in Pakistan, and
- (b) Injury is being caused to domestic industry of Pakistan.

Countervailing Duties Ordinances, 2000

The issue of grant of subsidies by developed countries to their agricultural sector was one of the main reasons for the failure of Cancun Ministerial Conference of WTO.

The definition of subsidy contains three basic elements:

- (i) A financial contribution
- (ii) By a government or any public body within territory of a WTO Member
- (iii) Which confers a benefit

All three of these elements must be satisfied in order for a subsidy to exist.

The basic provisions of GATT on the use of subsidies have been elaborated by the Agreement on Subsidies and Countervailing Measures (SCM). The basic aim of these provisions is either to prohibit or to restrain the use of subsidies by a WTO Member that affects the interests of other Members. However, where the use of permitted subsidies results in material injury to a domestic industry in an importing country, the rules permit the importing country to take remedial measures, which could take the form of countervailing duties on subsidized imports.

Pakistan through Countervailing Duties Ordinance, 2000 has given effect to WTO provisions relating to imposition of countervailing duties to offset such subsidies. This has been done by providing a framework for investigation and determination of such subsidies and injury in respect of goods imported into Pakistan.

Where the National Tariff Commission in Pakistan determines in accordance with the provisions of the Ordinance that any exporting country pays or bestows, directly or indirectly, any subsidy upon the manufacture or production or the exportation of any investigated product including any subsidy on transportation of such product and such subsidy causes injury then, upon the

importation of any such product into Pakistan, it is in a position to impose a countervailing duty thereon.

Standard of injury

Similar principles apply when governments take safeguard measures to restrict imports in order to assist a domestic industry that is being injured by a sudden and sharp increase in imports. The standard of 'injury' to the industry that must be established to justify safeguard actions is, however, much higher than that required for the levy of anti-dumping or countervailing duties. In the case of safeguard actions, injury to the industry must be 'serious' whereas in the case of countervailing and anti-dumping duties, a lower standard of proof of material injury is adequate.

The difference in standards is attributable to the fact that in taking safeguard measures, the industry's problems do not arise from unfair competition, while taking anti-dumping or countervailing measures, these are due to the unfair trade practices of foreign producers.

Conclusion

As a result of increased trade under the multilateral trade regime of WTO and the emergence of different countries as exporters of their products to Pakistan, the threats arising from enhanced imports are becoming imminent for the local industry. These days, one often comes across sporadic complaints in Pakistan that certain products are being dumped by foreign producers or are being subsidized to such an extent that it amounts to serious distortion of the market price to the detriment of local producers. In view of this situation, it can be anticipated that Pakistani industries would be availing the trade remedies, more aggressively, by making use of Safeguards, Anti-dumping and Countervailing Ordinances, in order to protect themselves against foreign suppliers.
