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Trade Arrangements Between Pakistan and EU/UK

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EXECUTIVE SUMMARY

This brief attempt lays down the features of the Generalized Scheme of Preferences (GSP+ scheme) and Developing Countries Trading Scheme (DCTS) and the need to enter into Free Trade Agreements (FTAs) with the European Union and England, in the context of Pakistan. The purpose of both GSP+ and DCTS is to provide developing countries including Pakistan with access to the European and British markets, respectively, without any tax liabilities. With the foregoing advantage, there are also certain disadvantages, such as trade-caps restrictions and onerous requirements to conform to certain conventions and treaties. To ensure improved trade arrangements which should also enhance its quality of exports, Pakistan should pursue FTAs with the EU and the UK.

About the Author

Dr. Faiza Ismail is an Assistant Professor at LUMS Law School. Broadly speaking, Dr Ismail has a keen interest in examining legal issues related to economics and finance in general and specifically in Pakistan. Currently, she is exploring the potential for Pakistan to overcome its economic crisis and get rid of IMF bailouts in the long term. While political stability and consistent monetary policy are crucial for instant survival from the economic crisis, Pakistan's performance in international trade is a first step toward long-term stability of the economy, not to mention agriculture sector's revival and industrial growth would eventually solve the problem of financial difficulties of the country. Dr. Ismail who is also the author of the internationally published academic book 'Islamic Finance in the Financial Markets of Asia, Europe, and America' (Routledge 2022), has extensively explored the area of Islamic Finance law in the UK, US and Pakistan. Dr. Ismail is also currently a non – resident Research Fellow of International Law at IPRI.

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Introduction

Pakistan and the UK enjoy a long trade relationship ever since Pakistan gained independence. By 2023, the total value of trade is £4.4 billion between the two countries.¹ The two countries have been trading under the European Union (EU) Generalized Scheme of Preferences Plus (GSP+) scheme. Post Brexit, the UK has introduced the Developing Countries Trading Scheme (DCTS) to replace GSP+ status for Pakistan. Given below is an analysis of GSP+ scheme as well as DCTS with a suggestion to replace these schemes with Free trade agreements (FTAs).

GSP+ Status

The GSP+ scheme is provided to vulnerable developing countries to easily access the European market and sell their products with a tariff exemption to encourage them to adopt sustainable development and good governance. A country requests in writing for the GSP+ scheme to the EU Commission, and they add the country to the beneficiary list under Article 10 of the GSP regulations. They can take out the country based on not fulfilling the obligations under Article 9 of the regulation.²

Pakistan's trade with the EU is regulated by the Cooperation Agreement between the European Commission and the Islamic Republic of Pakistan, signed in 2004, and the EU Generalized Scheme of Preference Plus (GSP+). The GSP+ status ensures preferential treatment for Pakistan's textile exports in European markets, with no customs duty, which makes Pakistani products cheaper and increases Pakistan's exports.

Pre-Brexit, UK-Pakistan trade was regulated under GSP+ scheme under the EU regulation.³ Post-Brexit, the UK has replaced GSP+ scheme with Developing Countries Trading Scheme (DCTS). The DCTS is available to 65 countries to enhance their trade relationships with the UK.⁴ The DCTS allows developing countries to export

¹ Department for Business and Trade, 'Trade and Investment Factsheets' (2023) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1185756/pakistan-trade-and-investment-factsheet-2023-09-21.pdf> (accessed 3rd October 2023)

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1500986680646&uri=CELEX:32012R0978>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1500986680646&uri=CELEX:32012R0978>

⁴ World News Story, 'New UK Trade Scheme Paves the Way for an Increase in Pakistani Exports' (2022) GOV.UK <<https://www.gov.uk/government/news/new-uk-trade-scheme-paves-the-way-for-an-increase-in-pakistani->

- (i) that developing countries should prevent drug production and trafficking.
- (ii) protect human rights and
- (iii) protect the environment.

Upon fulfilling the above conditions, the European Commission (EC) would grant tariff preferences. India contended that these conditions create undue difficulties for India to trade in the EU market and will impact its export to the EU; thus, it will not benefit from the GSP+ status. In other words, India is saying by putting additional requirements, EC has put India and other GSP+ status holding nations in disadvantaged position because under GSP+ scheme these countries are already required to comply with numerous UN Conventions and treaties. This also prevents India from benefiting from the most favored nations (MFN) principle with reference to Article I: 1 of the GATT 1994 and paragraphs 2a, 3a, and 3c of the enabling clause.⁸

The WTO's Dispute Settlement Body decided in favor of India. It held that the conditions imposed under the special arrangement are inconsistent with Article I: 1 of the GATT, and tariff preference or benefits should be provided on a nondiscriminatory basis. Imposing tariff preferences after adhering to the conditions which already exist under GSP+, does not align with the 2(a) enabling clause. The EC had failed to show that the Drug Arrangements are justified and necessary for the protection of human life and health.⁹ The EC Appealed in the Appellate Body. The Appellate Body agreed with the panel's decision that the Enabling Clause is an exception to GATT I: 1. It concluded that conditions under Drug Arrangement do not justify under 2(a) of the enabling clauses as the clause does not set out any objective criteria.

Nonetheless, there are some disadvantages of the GSP+ status as well, which are more severe and can lead to the withholding of the GSP+ status. The GSP+ status has certain provisions that impose restrictions and review requirements on the recipient countries on several imports to the EU; that is, imports from all the GSP+ countries to the EU cannot exceed 14.5% of the total imports to the EU. Hence, such limitations do not allow Pakistan to increase its exports to the EU under GSP+ status.

⁸ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds246_e.htm

⁹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds246sum_e.pdf

Additionally, other requirements must be fulfilled, or the country will be parted from the scheme, like Sri Lanka lost GSP+ status in 2010 for human rights violations. Similarly, the EU monitors Pakistan's compliance with different UN conventions and treaties every two years. The latest 2020 review shows that Pakistan lacks compliance with 3 of the 27 required treaties, including the Stockholm Convention, the UN Framework Convention on Climate Change, and the Convention on Biological Diversity. It also highlighted human rights, labor rights, money laundering, and terror financing issues.

Free Trade Agreement (FTA) Framework under WTO Guidelines

The WTO regulates trade between countries in the absence of specific trade arrangements. International trade regulation under WTO is based on Most Favored Nation (MFN) principles. MFN principle requires the WTO member states to ensure equal treatment of all the member nations in terms of trade, any special treatment for one nation will become available to all the member nations of the WTO. EU GSP+ regulations and DCTS is also based on WTO laws but it is more sort of aid based arrangement for developing countries. There are three issues regarding the GSP+ and DCTS, i.e.

1. They restrict amount of trade
2. Availability of tariff is subject to compliance with international law and
3. They promote power misbalance in trade relations

However, WTO does provide for free trade agreement which allows greater flexibility and freedom to the member nations regarding volume of trade and special treatments. Article 24 of the General Agreement on Tariffs and Trade (GATT) allows countries to enter into free trade agreements, allowing them to extend tariff benefits to certain countries without extending them to other WTO members, which is an exception to MFN. Article 5 of the Generalized Agreement on Trade in Services (GATS) deals with economic integration agreements and departure from the MFN principle in providing services to other countries. Moreover, countries can form Regional Trade Agreements (RTA) under the WTO regulations and inform the WTO's General Council through an

early announcement and notification. The WTO also established a Committee for RTAs, which examines their agreements.

Recommendation

Although Pakistan has been benefitting from the GSP+ status and now with DCTS, the benefits are being extended on an aid-based scheme. Moreover, these benefits can be withdrawn based on non-compliance with the conditions stipulated in Article 9 of the GSP regulations. Since Pakistan is not complying with the three of the key UN Conventions, there is a likelihood that EU might expel Pakistan from the GSP+ status like Sri Lanka. Further, there are restrictions imposed on the export cap of the GSP+ holding countries which cannot exceed 14.5% of the total EU imports. Therefore, Pakistan should attempt to enter into an FTA with the European Union as well as UK so that we trade with them on equal terms. An FTA between Pakistan and EU/UK will be full of potential as well as challenges because EU/UK will only sign FTA with Pakistan if it is producing high quality commodities. An FTA between Pakistan and EU/UK will allow Pakistan to have a trade relationship based on equality. In other words, a trade relationship based on FTA will improve quality of Pakistan's exports as well as it will allow Pakistan to rise volume of its exports to Europe in addition to equal status.