The Pakistan Business Council

FOSTERING ECONOMIC GROWTH

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A Framework for Renegotiating the Afghanistan Pakistan Transit Trade Agreement

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Pakistan Business Council

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Afghanistan Pakistan Transit Trade Agreement

(APTTA)

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1. Executive Summary

This paper sets out a possible framework for renegotiating the Afghanistan Pakistan Transit Trade Agreement 2010. It is not intended to be a comprehensive analysis of global agreements or practices, nor, in the absence of data on transit trade, requested but regretfully not made available to the Pakistan Business Council, does it offer a detailed account of the economic impact on Pakistan of the past agreements. However, there is sufficient directional evidence of the misuse of the treaty to the detriment of government revenue and negative impact on Pakistan's industry and employment. Whilst there is scope to strengthen the checks and balances to prevent this misuse (and the paper offers some suggestions), it is fair to say that:

- **The beneficiaries of diversion (and evasion) are not Afghan traders alone. Pakistan and UAE based businesses are complicit. It feeds off (and into) the undocumented sector, flouting FATF and anti-money laundering conventions;**
- **Porous borders and weak controls allow (and often facilitate) it. Customs, Frontier Constabulary etc do not work in tandem. Full containers re-enter with transit goods;**
- **High import duty, together with the compounding impact of sales tax in Pakistan, relative to the cost of diversion, leave a tempting incentive to evade. Transit trade volumes grow as Regulatory and Additional Customs Duty is levied**

So long as these fundamental flaws remain, authorities work in silos and full transparency is not created, diversion will continue. It is also useful to recognize several other factors in re-negotiating the treaty:

- **Pakistan's negotiation strength is significantly stronger today than it was in 2010 when the US influenced the agreement;**
- **The need to protect Pakistan industry and government revenues can and should outweigh the diplomatic objectives;**
- **The Iran alternative for transit to Afghanistan is shorter, cheaper and quicker and as long as it remains so, it is inevitable that transit trade would be diverted. Important therefore to ensure that such goods do not enter Pakistan from Iran/Afghanistan;**
- **Pakistan needs to substantially improve cost, speed and reliability of logistics and border handling. This would also benefit domestic movement of goods and make them more competitive for exports;**
- **Pakistan's access to Central Asia is no longer solely dependent on Afghanistan. The Kashgar route offers an alternative, albeit, presently for 7 months of the year. The QTTA[1] needs to be activated;**
- **The changing geo-political developments affecting Iran and India with the growing influence of China in Iran offers Pakistan an opportunity to link Gwadar with Chabahar and potentially develop a route to Turkmenistan.**

2. The UN Convention on the Law of the Sea (UNCOLS) 1982

The United Nations Convention on the Law of the Sea (UNCOLS) 1982, which superseded the earlier UN Convention on Transit Trade of Land-Locked States 1967, provides rights for land-locked states of access to and from the seas. However, UNCOLS makes such rights subject to bilateral agreements to be made between land-locked and transit states. Land-locked states have no unconditional right of access to and from the seas and thus unfettered freedom of transit. Bilateral and multilateral agreements between the land-locked and transit states have a crucial and irreplaceable role. It is pertinent to note that UNCOLS covers access of land-locked countries to the sea, whereas Afghanistan's access to India and Pakistan's access to Central Asia to serve their domestic markets (as opposed to gaining/providing access to the sea) are outside the purview of UNCOLS and is in any case to be agreed bilaterally.

[1] QTTA – Quadrilateral Traffic in Transit Trade is a transit trade deal between China, Pakistan, Kyrgyzstan and Kazakhstan

3. The Almaty Programme of Action 2003

The focus of the Almaty Programme, funded by the World Bank, was on improving infrastructure and border management to bring down the cost and cut the time of moving goods through transit countries. It also sought to harmonize trucking by adopting the TIR[2] system. Thus the Almaty Programme did not address the rights of land-locked and transit countries, which remain subject to bilateral agreements.

4. History of Pakistan/Afghanistan Transit Trade

In 1965 Pakistan and Afghanistan signed the Afghanistan Transit Trade Agreement (ATTA). It was unilateral, in that it provided transit to Afghanistan via Pakistan but not to Pakistan via Afghanistan to the then Soviet Union. Moreover, the way it was structured left room for rampant diversion and evasion.

To rectify the defects and allow Pakistan reciprocal transit rights, an MOU was signed in July 2010 (in Secretary Hilary Clinton's presence) and ollowed by a formal transit agreement – The Afghanistan Pakistan Transit Trade Agreement (APTTA) in October 2010. This had a very strong backing of the United States.

The 2010 APTTA allows both countries to use each other's airports, railways, roads, and ports for transit trade along designated transit corridors. The agreement does not cover road transport vehicles from any third country, be it from India or any Central Asian country.

Afghan trucks are to enter Pakistan via border crossings at Torkham, Ghulam Khan, and Chaman to transit Afghan goods across Pakistani territory and to import goods from Pakistani ports in Karachi, Port Qasim and Gwadar. The signed Agreement permits Afghanistan trucks access to Wagah border with India, where Afghan goods will be offloaded onto Indian trucks. It does not, however, permit Indian goods to be loaded onto trucks for transit back to Afghanistan.

The agreement provided Pakistan access to every country bordering Afghanistan, with access to Iran via the Islam Qila and Zaranj borders, Uzbekistan via the Hairatan border, Tajikistan via Ali Khanum and Sher Khan Bandar crossings, and Turkmenistan via the Aqina and Torghundi border crossings. Pakistani imports and exports are granted permission to enter Afghanistan via border crossings at Torkham, Ghulam Khan, and Chaman.

The APTTA calls for various measures to counter smuggling of duty-free goods into both Pakistan and Afghanistan by mandating: tracking devices of goods, financial guarantees and special bonded carrier licenses for transit trucks, vehicular tracking systems, and container security deposits.

The Afghanistan-Pakistan Transit Trade Coordination Authority (APTTCA) was created to coordinate the Afghanistan–Pakistan Transit Trade Agreement and meetings are held.

5. Progress on APTTA 2010

Implementation of the treaty has been inconsistent, with both sides complaining of continued barriers to trade.

Owing to tensions between the government of President Hamid Karzai and Pakistan, much of the APTTA provisions remained unexploited after 2010. Pakistan is Afghanistan's largest trading partner, and Afghanistan is Pakistan's fourth largest export market while Pakistan is again the fourth largest source of Afghan imports. Banking contacts between the two countries remain under developed, although Pakistan's commerce minister in 2015 pledged to improve these.

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[2] TIR - Transports Internationaux Routiers" or "International Road Transports which governs movement of trucks across borders

Afghanistan has complained that anti-smuggling security measures agreed in the APTTA are restrictive, cost-prohibitive, and that banking/insurance guarantee fees are excessively high and time consuming, ranging from Rs. 100,000 to Rs.150,000 per carrier. Banks from both countries have also refused to offer such guarantees, further delaying customs clearances.

The required truck-tracking systems have been implemented in Pakistan, while the Afghan side has yet to install such systems on their own trucks. Afghanistan also refuses to grant Pakistan the right to import and export goods from Central Asia across Afghan territory. The 2010 APTTA agreement allowed for Afghan goods to be exported to India via Pakistan territory, but did not permit Indian goods to in turn to be exported to Afghanistan across Pakistani territory.

Though the pre-2010 rampant evasion has been arrested, the Pakistan government and industry continue to suffer from diversion of goods ostensibly (and implausibly) imported for consumption or use in Afghanistan. Some examples are:

- Quantity of Tea which is disproportional to Afghanistan's population
- Black Tea which is not the preferred choice as Afghanis consume green tea. Yet Black tea is the largest part of what is imported for transit.
- Quantity of razor blades and tyres imported are far higher than what Afghanistan needs
- Industrial inputs are imported for industries that don't exist
- The formal five-year term of the APTAA expired in 2015 and the countries have been negotiating a revision since then.

6. The Alternative Route via Iran for transit goods

Chabahar Port is Iran's only oceanic port. The first phase of the port was opened in 1983 during the Iran–Iraq War as Iran began decreasing dependency on ports in the Persian Gulf.

In May 2016, India, Iran and Afghanistan signed a trilateral transit agreement under which India would refurbish one of the berths and reconstruct a 600-meter-long container handling facility at the port. The port is partly intended to provide an alternative for trade between India and Afghanistan as it is 800 kilometers closer to the border of Afghanistan than Pakistan's Karachi port. The port handled 2.1 million tons of cargo in 2015, which was planned to be upgraded to handle 8.5 million tons by 2016, and to 86 million tons in the future. Following the re-imposition of sanctions against Iran, foreign companies became reluctant to participate in the port's expansion, even though for Afghanistan's sake, the Chabahar port/route was exempted from sanctions. Only 10% of the ports 8.5 million ton total capacity was utilized in 2019.

In 2016, India also agreed to build the US$1.6 billion Chabahar–Zahedan railway, pledging US$575 million as its contribution. However, frustrated by slow progress, Iran decided to take over this project and most recently it is reported that China will partner Iran in what is described as an extension of its OBOR project, potentially linking Chabahar with Gwadar.

The Asian Development Bank in its report: "CAREC Corridor Performance Measurement and Monitoring (CPMM) Annual Report 2019", stated that around 70 percent of Afghan transit trade has been diverted through Iran due to lower costs, more attractive security deposit, and detention tariffs, as Pakistan is still facing severe challenge in reducing structural barriers for road transport that keep costs high. The report noted the following issues:

- Torkham and Chaman border-crossing points (BCPs) continue as two of the most time-consuming nodes;

- Only bonded carriers in Pakistan can work with Afghan truck operators, which drives up the cost of road freight transport as the bonded carriers are required to pay $32,000 to the Federal Board of Revenue as a guarantee deposit to receive an operating license. These costs are then passed on through higher fees to the truck operators, ultimately reducing the attractiveness of the transit route;
- Furthermore, diesel fuel in Iran ($0.06 per liter) is significantly less expensive than in Pakistan ($0.86 per liter), providing an additional edge in terms of cost competitiveness;
- The report further stated that the CPMM trade facilitation indicator (TFIs) reported longer average border-crossing time, although relatively unchanged average border-crossing cost;
- Measures of speeds showed that trucks did not move as fast compared to 2018. Average border-crossing time increased to 38.2 hours. The time to cross Chaman was 60.1 hours, ranked as the most time-consuming BCP in 2019; Peshawar took 45.8 hours, and ranked the third most time-consuming;
- Average border-crossing costs remained comparatively unchanged. Peshawar averaged $319 to complete border crossing in 2019, while Chaman was lower at $156;
- Greater adoption of freight on rail and inland waterways would reduce freight costs and boost low- unit value exports such as agricultural produce.

7. An Alternative Route for Pakistan to Central Asia that Circumvents Afghanistan

In April 2015, China and Pakistan agreed to construct various infrastructure projects worth approximately $46 billion under the China-Pakistan Economic Corridor. Projects currently under construction include the a system of motorways and upgraded roads from the Pakistani coastal cities of Karachi and Gwadar, all the way to the Chinese border and onwards to Kashgar in China's Xinjiang province. From Kashgar, transport links to Kyrgyzstan and Kazakhstan have been upgraded, while seasonal road access to Tajikistan is provided by the Pamir Highway. Upgrading of Pakistan's roadway network is under way, and will allow Pakistan access to those states via China rather than Afghanistan by 2020. A couple of challenges that need to be overcome are: off-seasonal access for 5 months of the year when the roads are closed and the current requirement of unloading and reloading of trucks from Pakistan in China, enroute to Central Asia.

The Pakistan government continued to be frustrated by Afghanistan's refusal to allow Pakistani goods access to Central Asian markets until Indian exports are granted reciprocal access to Afghan markets. Owing to this frustration and ongoing construction of roadway projects to China under the China-Pakistan Economic Corridor, the Pakistani Government in February 2016 signaled its intention to completely bypass Afghanistan in its quest to access Central Asia by announcing its intent to revive the Quadrilateral Traffic in Transit Agreement allowing the Central Asian republics to access Pakistan's deep water ports without having to rely on a politically unstable Afghanistan as a transit corridor. However, the QTTA would not allow Pakistan access to Turkmenistan and Iran across Afghan territory as the APTTA does. In early March 2016, the Afghan government reportedly acquiesced to Pakistani requests to use Afghanistan as a corridor to Tajikistan, after having dropped demands for reciprocal access to India via Pakistan. The Kasghar route however is seasonal and open for 7 months of the year only.

8. Key observations of the India-Nepal Transit Treaty

Signed in 1963, this agreement predates the UN conventions regulating transit trade. The following are the key observations:

I. Both sides have right to protect their respective interests. In effect this means that India as the dominant coastal country can institute measures to protect its interests.
II. Transit goods may only move between designated points and on prescribed routes.

III. The Indian government prescribes a complex system of documentation and verification, which includes:
   a. Customs Transit Declaration (CTD)
   b. Bill of lading
   c. Invoice
   d. Original packing list
   e. A copy of the letter of credit

IV. Bank or insurance guarantees covering Indian customs duty need to be provided for goods moving through rail.

V. Bank or insurance guarantees need to be furnished for goods transported by road. The sum guaranteed in this case should cover the difference in market value in India less the CIF value.

VI. All goods shall be transported in sealed trucks or rail bogies, except large machinery which can move on open trucks/bogies.

VII. India and Nepal have signed a Railways agreement. Goods to and from the Nepal border are transported through Indian Railways.

VIII. There is a trilateral leg covering use of Bangladesh ports .

9. Are there successful models of transit trade?

Most transit trade agreements are skewed to protect the interests of the coastal country. One common feature of successful collaboration is entry into a common trading block with harmonized duty and taxes. Uganda is a landlocked country which benefits from its membership of the East Africa Community. Due to harmonized duties and taxes and the use of common transport systems, it does not face resistance from its coastal neighbors. Several landlocked East European countries that joined the EU have similarly benefited from the unconstrained access to the sea.

A “common market” between Pakistan and Afghanistan with harmonized duties and taxes is presently hard to envisage, but worth striving for as peace returns to the country. This would perforce necessitate a higher level of documentation of the economy and assist the Afghan government rise revenues for social development.

10. The scenario post-the US pull-out from Afghanistan

With US pull-out from Afghanistan imminent and Pakistan likely to play a critical role in the post-US arrangements in Afghanistan, the possibility of negotiating more favorable transit arrangements exist. It is recommended that the following be incorporated in such an arrangement:

a) Place quantitative and qualitative limits.
   I. Restrict the quantity of consumer goods in proportion to Afghanistan’s population.
   II. Place qualitative checks in line with established and verified consumption preferences and patterns.

   For example, if Afghanistan’s population is 37 Mn and the per capita consumption of tea is 0.6Kg, it may be allowed to import 22,000 tons of tea. Further, if the tea drinking habit is green tea, then don’t allow import of black tea which is diverted to and consumed in Pakistan. The quantitative limit should also apply to electronic gadgets and domestic appliances.

b) Deny transit access to industrial inputs for which no industrial capacity exists in Afghanistan and for those that capacity exists, allow quantity in proportion to verified track record of manufacturing.

c) Require all traders availing transit facilities to be registered for income and sales tax in Afghanistan. Assist the Afghan government to achieve a high level of tax documentation and accountability.

d) Subject all transit goods to deposit of import duties and sales taxes upon entry into Pakistan

e) Refund duty and taxes collected under (d) above only to the Afghanistan government, thereby forcing traders to register there for tax.

f) Seek parity duties and taxes between Afghanistan and Pakistan to reduce the incentive to evade Pakistan taxes.

f) Require transit goods to be imported under letters of credit drawn on banks operating in Afghanistan (and not third countries such as the UAE). In the event that LCs are not possible, require remittance to originate from Afghanistan through banking channels. In the interest of transparency and compliance with FATF and Anti-Money Laundering laws, do not allow payments to be made from third countries.

g) Continue to resist the inclusion of auto-parts and cigarettes in the list of items admissible for transit.

h) Prevent flow of Indian goods overland from Wagah to Afghanistan, especially on Indian trucks, due to security risks and the likelihood of diversion.

i) Continue satellite tracking of containers up to the Afghan border, strengthen deviation monitoring enroute, share actions taken to provide deterrent and heighten checks on returning containers to ensure that goods do not re-enter Pakistan.

The Pakistan Business Council recommends that its members (and other key players in industry in Pakistan) be consulted when framing the quantitative and qualitative limits, and the right to revise these may be preserved in the agreement. It further advocates monthly public transparency of transit trade, contraventions detected and enforcement actions taken. An annual impact analysis of transit trade on the economy of Pakistan be conducted and made public.

About the PBC

The PBC is a private sector business policy advocacy forum composed of Pakistan's largest businesses / groups including multinationals that have a significant investment in and a long-term commitment to the growth of Pakistan. Members turnover represents every ninth Rupee of Pakistan's GDP and together the members contribute 25% of the annual tax revenues and 40% of exports. More information about the PBC, its members and its activities can be found on our website www.pbc.org.pk

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Servis

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Tetra Pak
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Unilever

The PBC Members by Sector

PBC currently has 82 members, whose businesses cover nearly all sectors of the formal economy. The sector wise representation (in alphabetical order) is detailed below:

Sector	Member Companies
Large-Scale Manufacturing	
Agro Industries	1
Cement	2
Chemicals / Fertilizer	8
Energy	2
Engineering	9
Fast Moving Consumer Goods	18
Packaging Material	2
Pharmaceuticals and Healthcare	6
Textiles	10
Total Members in Large-Scale Manufacturing	**58**
Services	
Financial service	12
Hospitality	1
Insurance	2
Logistics / Courier	2
Telecommunication	1
Utilities	1
Total Members in the Services Sector	**19**
Conglomerates	5

29 MNC's from 13 Countries

USA

UK

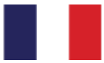
UAE

Switzerland

Japan

29 MNC's from 13 Countries

Netherlands



France

Bahrain

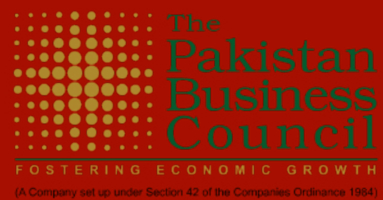
South Korea

Hong Kong

Germany

Sweden

Turkey



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