

FOREIGN TRADE RELATIONS OF BANGLADESH: AN OVERVIEW OF TRADE TREATIES

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Abstract— Present world economy is an interdependent one. Every state needs friendly business relationship with other states, which is done normally by multilateral or bilateral free trade agreements. This facilitates cross-border business. Accordingly, Bangladesh has signed many treaties with different countries and organizations. In the first place, it is a member of the World Trade Organisation (WTO) and as such is committed to carry out multilateral treaty obligations of GATT, GATS and TRIPS. It signed some regional agreements as well, such as SAFTA, ESCAP, SAPTA. In addition, Bangladesh signed bilateral treaties with different countries including Belgium Luxembourg Economic Union, India, Denmark, Malaysia, Singapore, Thailand, Vietnam, etc. This paper will overview the treaties, especially the principal ones, to inform the readers of Bangladesh's role and position in international trade in terms of treaty.

Index terms- Bilateral Agreements, Regional Agreements, WTO, New York Convention, TPP.

I. INTRODUCTION

To facilitate the international trading by companies, Bangladesh Government has signed both bilateral and multilateral treaties. The government has signed the former with certain countries with which it has special trading relations. On the other hand, it has entered into the latter to widen trading relations with a plurality of States. As such, Bangladesh foreign traders can conduct business with their counterparts from those States with which the government has already established a relationship. In the following part of this paper, various treaties and agreements that Bangladesh has signed, especially the main ones, will be overviewed.

A. BILATERAL AGREEMENTS :

Until now Bangladesh has bilateral agreements with more than approx. 27 foreign countries i.e. with BLEU (Belgium-Luxembourg Economic Union), China, Denmark, France, Iran, Korea, Pakistan, Poland, Romania, Singapore, Switzerland, Thailand, Vietnam, Indonesia, Italy, Japan, Korea, Netherlands, Philippines, Thailand, Turkey, United Arab Emirates, UK, USA, Uzbekistan, Austria, Germany. On 12 October 1994, Bangladesh signed bilateral treaty with Malaysia and it came into force on 20 August 1996. On 9

February 2009, Bangladesh signed a bilateral agreement with India and it came into force on 7 July 2011. The main purpose of this agreement was for the promotion and protection of investments for both the contracting parties (i.e. Bangladesh and India).

B. REGIONAL TREATIES:

Bangladesh signed some regional treaties to boost up the trading link and relationship with other foreign countries by placing Bangladesh in LDCs (Least Developed Country) list⁴. They will be briefly discussed below.

³See: <http://investmentpolicyhub.unctad.org/IIA/CountryBits/16> (accessed on 12 November 2015).

⁴See: http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf (accessed on 8 June 2016).

South Asian Free Trade Area (SAFTA) was signed on 6 January 2004 and came into force on 1 January 2006. All contracting states retain a sensitive list. Products appearing in this sensitive list will not get the benefit of tariff concession. Bangladesh has got a sensitive list, which contains 1254 items for non-LDCs and 1249 items for LDCs. The sensitive list of India contains 868 items for Non-LDCs and 480 items for LDCs; Memorandum of Understanding has been signed between Bangladesh and India, where India will provide duty free access of eight million pieces of items in one year, which items are covered under the SAFTA Sensitive List of India irrespective of conditions of sourcing of fabrics or port restriction.

Economic and social commission for Asia and the Pacific (ESCAP)⁵ is the first agreement on trade negotiations among developing member countries of the economic and social commission for Asia and The Pacific, sometimes it is known as Bangkok agreement according to article 39 of ESCAP. The main purpose of this agreement is to contribute the development of trade among Bangladesh, India, Laos, the Philippines, Korea, Sri Lanka and Thailand. Agreement on SAARC Preferential Trading Arrangement (SAPTA)⁶ consists of preamble and 25 Articles. The main objective of this Agreement is to establish and promote regional preferential

trading arrangement among contracting states⁷. Preferential Trade Agreement (PTA) among D-8 countries, (D-8)⁸ is also known as developing-8, which is related to trade development among eight countries, i.e. Bangladesh, Egypt, Indonesia, Iran, Malaysia, Nigeria, Pakistan and Turkey. Framework Agreement on the BIMST-EC Free Trade Area⁹ was signed on June 1997 and was ended on February 2004. Bangladesh, India, Myanmar, Sri Lanka, Thailand, Nepal and Bhutan are considered to be contracting states under BIMSTEC Agreement.

⁵ See: <http://www.mincom.gov.bd/> (accessed on 1 December, 2015).

⁶ See: <http://www.mincom.gov.bd/> (accessed on 1 December, 2015).

⁷ Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka will be considered as contracting states.

⁸ See: <http://www.mincom.gov.bd/> (accessed on 1 December, 2015).

⁹ See: <http://www.mincom.gov.bd/> (accessed on 1 December, 2015).

Protocol/agreement relating to trade negotiations among developing countries¹⁰ was done on 8 December 1971 at Geneva. Bangladesh is also a party to this agreement/protocol. Agreement on Global System of Trade Preference among developing countries is an agreement between developing countries and they are members of Group 77.

The main aim of Regional agreements are to build and boost up the trade relationship among contracting or member states and to provide special, differential and preferential treatment to Least Developed Countries (LDCs).

C. Agreements based on World Trade Organisation :¹¹

The World Trade Organization (WTO) was formed in 1995 as successor of General Agreement on Tariffs and Trade (GATT). Until now 153 states are members of WTO. WTO consists of rules and regulations for trading among different countries. The prime functions of WTO include administration of WTO agreements, acting as a negotiating forum, handle trade disputes, monitor national trade policies, provide technical assistance and trainings, co-operation with international organizations. WTO has three main agreements, i.e. GATT, GATS and TRIPS. Also, there are agreements on trade in goods, agriculture, SPS, TBT etc. The main motto of WTO is to provide equal treatment to all members in all respect concerning domestic and imported products to Most Favour Nation (MFN) and National treatment. WTO ensures transparency in trade practice among different nations. Bangladesh is the founder member of WTO and took part in different activities of WTO. Bangladesh is entitled to get special and different treatment under WTO as Least Developed Country (LDC). WTO consists of Trade Policy Review Mechanism (TPRM). The objective of TPRM is to conduct smooth Multilateral Trade Agreements and Plurilateral Trade Agreements by providing transparency in trade among WTO members' states¹².

¹⁰ See: <https://treaties.un.org/doc/Publication/UNTS/Volume%201235/volume-1235-I-814-English.pdf> (accessed on 8 December, 2015).

¹¹ See: <http://www.mincom.gov.bd/> (accessed on 1 December, 2015).

¹² See: <http://www.mincom.gov.bd/> (accessed on 1 December, 2015).

D. New York convention:

New York Convention also called United Nations Conference on International Commercial Arbitration. It has 16 Articles. This Convention is created on the recognition and enforcement of foreign arbitral awards. Article I of New York Convention shall apply to particular state where the arbitral awards are sought. Arbitral awards may be given by ad-hoc or permanent arbitral bodies. Article II of New York Convention states that each party should submit an agreement in writing that any dispute regarding legal relation should be solved by arbitration. Article III of New York Convention provides, each party should agree the arbitral award as binding and enforceable according to the laws of the territory where the award is relied upon unless the award is not made with onerous conditions or higher fees or charges. Article IV of New York Convention provides, applicant party may enforce the award by submitting the original award or certified copy of original award and original agreement. There should be translation of award or agreement form non-official language to official language based on necessity. Recognition and enforcement of the award may be refused because of some incapacity, invalidation of agreement, beyond the scope of arbitral jurisdiction, the composition of arbitral authority which is not according to agreement of the parties, not binding on the parties, not capable of settlement by arbitration under the concerned states' law, issue relating to public policy. Article VI of New York Convention provides, if any party applies for setting aside or suspension of the award, then the competent authority may adjourn the decision and may provide suitable security to concerned party. Article VII of New York Convention provides, this convention shall not affect the validity of multilateral or bilateral agreements. Article VIII of New York Convention provides, Secretary-General of the United Nations shall be considered as depositor of this Convention. Article X of New York Convention provides, any state at the time of signature, may declare ratification or accession in such a way that this Convention shall extend to all or any of the territories and shall notify the secretary-General of United Nations. Article XI of New York Convention provides when a federal or non-unitary state shall be bound by this Convention, i.e. Federal authority which has legislative jurisdiction under this Convention shall have the same obligation as those of contracting states which are not federal states. Article XIII of New York Convention provides, any Contracting state may denounce this Convention by written notification to the Secretary-General of the United Nations. There was a recent case on this convention in Bangladesh between Bangladesh Air Service (PVT) vs British Airways PLC 49DLR(AD) 1997.

E. IMPACT OF TRANS-PACIFIC PARTNERSHIP (TPP) AGREEMENT ON BANGLADESH TRADE SECTOR:

The TPP is a proposed regional free trade agreement (FTA) among United States, Australia, Brunei, Canada, Chile, Japan,

Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. TPP is considered as comprehensive and high standard FTA to liberalize trade including all goods and services. TPP also includes rules-based on commitments beyond current WTO rules and regulations in relation to trade. An outline was presented in Asia-Pacific Economic Cooperation (APEC) ministerial conference in November 2011. TPP will remove trade barriers and foster investment among the parties and will be considered as model for future trade dealing among APEC members and other countries. TPP negotiations have been going on for about 5 years and soon it will be concluded. There are many issues remain unsolved for want of decision from political level. Until now 9 chapters among 30 chapters of TPP have been concluded. USA is trying to negotiate with Brunei, Japan, Malaysia, New Zealand and Vietnam in relation to market access for goods, service and agriculture. Also USA's negotiating is conducted in relation to intellectual property rights, trade in services, government procurement, investment, rules of origin, competition, labour and environment. TPP will be considered as more accurate rules than WTO rules and will promote advanced industrialization, middle income, developing economics and economic growth among contracting states. The recent trade policy of Obama Administration is to rebalance the Asia-Pacific and introduce new regional rules to promote global economy. There are some doubt about TPP, they are:

- Though TPP is considered as comprehensive and high standard agreement but to what extent USA can balance its vision and rejection of other countries concerning the terms of TPP.
- Whether present chapters of TPP relate to congressional trade policy?
- To what extent the TPP will have made impact on multilateral trading system and other trade negotiations (i.e. proposed US-EU Trans-Atlantic Trade and Investment Partnership (T-TIP) agreement¹³.

¹³See: <https://www.fas.org/sgp/crs/row/R42694.pdf> (accessed on 12 November 2015).

Bangladesh has not yet ratified TPP and Bangladesh is considering this Agreement to ratify and following "wait and see" policy. New Polarization in the world trade is going on. Rather than bilateral agreements, the powerful trade nations are dividing into multilateral agreements blocks. 12 nations including USA signed the TPP. On the other hand, 10 ASEAN's countries and Australia, China, India, Japan, South Korea and New Zealand are trying to sign Regional Comprehensive Economic Partnership (RCEP) agreement. These two blocks control 67% world trade. Contracting states of TPP control 40% of total trade and contracting states of RCEP control 27% of total trade. Vietnam and India are preparing to sign free trade agreement with European Union. India is also trying to reach free trade agreement with USA. Bangladesh is one of the main export nations in USA and European Union market. By creating these blocks and providing duty-free-export facility to India and Vietnam in USA and European Union market will make threat to Bangladesh export sector. Because of TPP and RCEP,

Bangladesh may also lose the third and fourth largest export markets in Canada and Japan. Bangladesh mainly exports garments products to USA and European Union market. These exporting garment products cover 80% of total garment exports. Bangladesh may lose this market because India and Vietnam will be in better position in future. India is going to sign Free Trade Agreement (FTA) with USA and European Union. India will be capable to get duty free export of garments products to both USA and European Union market. India is also trying to sign TPP. On the other hand, Vietnam is already a member of TPP and thus will be able to get duty free export of garment products to USA and EU. Bangladesh has to give 16% tariff on export garment products to USA. India and Vietnam are also competitors of exporting leather products to USA and EU. Bangladesh has bilateral agreements with 45 countries. But without India, china, Turkey, Bangladesh has got less export rate. Bangladesh is trying to reach agreements with 10 countries including Russia, Afghanistan, Armenia, Azerbaijan. Bangladesh mainly exports garment, leather, shoes and medicine. If Vietnam gets duty free facilities to export these products, then Bangladesh will lose its export market in USA and Canada. Currently, Bangladesh Ministry of Commerce is trying to know from India that what steps India is taking to cope up with the challenges of TPP.

The main objective for forming TPP should be to promote economic value rather than geopolitical purpose and should be opened to all Asia and Pacific countries including China. The¹⁴

¹⁴See: <http://www.kalerkantho.com/print-edition/last-page/2015/11/12/289644> (accessed on 12 November 2015).

research shows that under completely integration in terms of tariff elimination under TPP, the GDP of Bangladesh will be decreased by 0.49 % and may affect greatly to exportable goods of Bangladesh. If Bangladesh enters into TPP, then the GDP of Bangladesh will increase by 2.39%¹⁵. Some may argue that only Trans-Pacific may be members of this treaty and thus it may exclude Bangladesh to entry into TPP. Theoretically, Bangladesh may not be a contracting state of TPP Agreement due to non-membership of Trans-Pacific Region. However, Probably Bangladesh may be a contracting party to TPP by putting an extra Clause in TPP Agreement subject to other members¹⁶ valid agreements/consents, i.e. "All the provisions of all the Chapters of TPP shall have same effect to Bangladesh regardless of non-membership of Bangladesh within Trans-Pacific Region unless any substantial or gross contradiction arise against any provision of TPP and any such kind of dispute will be settled as soon as possible by relevant authority of TPP without causing any unreasonable inconvenience or unreasonable burden to either Bangladesh or any other state".

Some argue that impact of TPP on Bangladesh trade will be short term or long term. Bangladesh needs to join any effective regional agreement to overcome this problem¹⁷.

TPP can affect badly national economic development of developing countries including Bangladesh. They are:

- The TPP forces equal rules on unequal partners.
- TPP forbids using trade policy to protect domestic industries.

- The TPP bans using government procurement to assist domestic firms.
 - The TPP limits regulation of foreign investor too much.
 - The TPP curtails the sovereignty of national courts and adopting new laws.
 - It may make developing countries more vulnerable to financial crises.
 - It undermines public health.
 - It becomes difficult for companies to get necessary technology.
- ¹⁵See:<http://journals.abc.us.org/index.php/abr/article/view/Nafeez> (accessed on 13 November 2015).
- ¹⁶Contracting states of TPP.
- ¹⁷See:<http://old.thefinancialexpress-bd.com/2015/10/07/110798> (accessed 13 on November 2015).
- It undermines state-owned companies¹⁸.

II. CONCLUSIONS

In international trade relations, as seen above, there are both bilateral and multilateral treaties to which Bangladesh is a party. Like any other country, this practice is normal. However, to maintain a friendly relation with all States or at least majority of the trading States it is preferable to join multilateral deals like the United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention)¹⁹. This will help Bangladesh trade on identical legal provisions with others who are parties to the same international legislation. At the same time, depending on bilateral interests, Bangladesh may enter bilateral treaties as well.

¹⁸See: <http://foreignpolicy.com/2015/07/07/9-ways-the-tpp-is-bad-for-developing-countries/>(accessed on 13 November 2015).

¹⁹See:<http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf> (accessed on 8 June 2016).

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